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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 228.

JULIUS FREIBURG, J. WALTER FREIBURG, JEPTHA L. WORKUM, MAURICE J. FREIBURG, AND EZEKIEL L. WORKUM, COMPOSING THE FIRM OF FREIBURG AND WORKUM, APPELLANTS,

vs.

JOSEPH DREYFUS, LEHMAN MEYER, AND ABRAHAM ERMANN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 20, 1886.

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1 UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

JULIUS FREIBURG *et al.*, Appellants,
vs.
JOSEPH DREYFUS *et al.*, Appellees. } No. 10505.

D. C. & L. L. Labatt, for appellants; Singleton, Browne & Choate, for appellees.

Transcript of Appeal.

Appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, A. D. 1886.

2 *Bill, Affidavit, Interrogatories, and Prayer for Injunction. Filed March* 14, 1884.

To the honorable the judges of the circuit court of the United States for the 5th circuit & eastern district of Louisiana, in equity:

Julius Freiburg, a citizen of Ohio, domiciled in Cincinnati; J. Walter Freiburg, Marinee J. Freiburg, Jeptha L. Workum, & Ezekiel L. Workum, all citizens of Ohio and residing in the city of Cincinnati, State of Ohio, and composing the commercial firm of Freiburg & Workum, domiciled and doing business therein, complain and bring this their bill against Joseph Dreyfus, a citizen of the State of Louisiana and residing in New Orleans, and Abraham Ermann, a citizen of Louisiana and residing at Morgan City, parish of St. Mary, in said State, and Lehman Meyer, also a citizen of Louisiana, residing in the city of New Orleans; and thereupon your orators complain and say—

1st. That in suit No. 10378 of the docket of this honorable court your orators have instituted suit against said Joseph Dreyfus for a just debt in the sum of nineteen thousand dollars ($19,000), with interest from judicial demand till paid.

That in said suit your orators have sequestered as still belonging to def't 29 bbls. of whiskey in their original packages, with
3 the initials and shipping marks of said Dreyfus still thereon, under the vendor's lien and privilege, by the art. 3227 of the Civil Code of Louisiana, and under allegations that said Dreyfus has become insolvent and was in failing circumstances and was fraudulently removing and concealing large quantities of his goods and moving them to another store in the night-time in order to defraud his creditors and your orators, and by endeavoring to place said property beyond their reach, and your orators feared and believed and had good cause to fear and believe that def't, his agents and confederates, would conceal and part with said property during the pendency of the suit; all which will more fully appear by the record, testimony, and pleadings in said suit hereto annexed and

made part of this bill for greater certainty, together with the return of the marshal.

Now your orators complain that in said suit one A. Ehrmann intervenes and sets up a pretended pledge made by Lehman Meyer, a pretended vendee from Dreyfus, which your orators say and charge are fraudulent, illegal, and unjust, and concocted to hinder, delay, and obstruct your orators in said suit from the exercise of their legal right, and were entered into by the parties aforesaid with full knowledge that they were committing acts of fraud and simulation; and your orators charge that Lehman Meyer's pretended and paper transfer of said property being tainted with fraud and collusion that Ehrman's title as pledgee is tainted with corruption and equally void as to your orators.

2d. Your orators further complain that said Lehman Meyer
4 claims to have acquired said goods by an alleged sale or giving in payment for an alleged debt then claimed to exist between him and Dreyfus on Saturday, 27th Oct., 1883, notwithstanding he was fully aware of the insolvency of said Dreyfus and his impending bankruptcy, and your orators complain that said transaction was injurious to your orators and to the other creditors and was illegal and fraudulent, null and void, by art. 1964 of the Civil Code, collusively intended to confer on said Meyer an unjust preference prohibited by the laws of Louisiana unless revoked and rescinded.

3rd. That so soon as said Meyer had obtained the fraudulent and precarious possession of said goods, the delivery of which was secret, anti-commercial, and unusual in the dead of night, when all business men close their stores and rest from labor until Monday, and in order to elude judicial process, which is prohibited on Sundays, said Meyer pretended to pledge the same to one Abraham Errman for $15,000, who was conveniently present as a guest of said Dreyfus and Meyer, by special request and appointment, in Dreyfus' house in New Orleans, and said Meyer attempted to invest his fraudulent and precarious title and possession in Errmann, as pledgee, to the great injury of your orators and in pursuance of the fraudulent and simulated scheme aforesaid. Now your orators charge that said sale to Meyer was illegal, fraudulent, null, and void, against equity and good conscience, and should be avoided and annulled as injurious to your orators, inasmuch as said Dreyfus was at the time and is now and was then and before hopelessly insolvent and unable to pay his debts; that said Meyer & Errmann
5 had full knowledge and notice of the inability of said Dreyfus to pay his debts and his actual and impending insolvency, and that the whole transaction was concocted in order to secure an unjust and illegal preference and to defraud and injure your orators and the other creditors, and that said Errmann lent himself as a 3d person *mala fide* interposed to carry out the scheme and collusion of Dreyfus & Meyer to obtain and confer an unjust advantage over your orators and to cover up and screen said property from pursuit, and to delay and hinder your orators from obtaining their rights thereon.

4th. Your orators specially complain that the pretended delivery of the whiskey was unusual and anti-commercial, surreptitious, and to effect a fraud, and did not in equity destroy Dreyfus' title or possession, and that said goods remain still his and liable for his debts and subject to your orators' rights, and that said pretended sale and pledge are a cloud upon def'ts' title and are hindrances and should be set aside and annulled as in fraud of your orators' claims thereon and in violation of the laws of Louisiana and good conscience and destructive of your orators' common pledge thereon, especially as said Meyer is also insolvent.

5th. Your orators charge that all the acts, doings, and pretenses of said defendants were illegal, fraudulent, and null and void, with full knowledge of Dreyfus' insolvency, and were done to obtain an unjust advantage by Meyer to injure and defraud your orators,

6 and that Meyer could not transfer any better right or title than he had, whether the said Errmann be in good or bad faith (not admitting, however, that he was in good faith, but specially denying it), and that the source of Errmann's pretended title was corrupt and the property was taken with the taint of corruption as in fraud of your orators' rights.

6th. That said def'ts illegally and fraudulently and collusively combined and confederated together to make said fraudulent and illegal sale and pledge in order to screen said merchandize or its proceeds from your orators and the other creditors; that the transaction from beginning to end was dishonest and contrary to the principles of mercantile usage and fair dealing and out of the regular course of business and covered with all the *indicia* of fraud and simulation, and should be annulled, rescinded, and revoked by this honorable court.

7th. Your orators further complain and aver that said Dreyfus is and was for some time previous absolutely and hopelessly insolvent and unable to pay his debts, and that if said fraud is consummated will irreparably injure your orators and leave them remediless at law.

Your orators further say *he has* no adequate or substantial remedy at law, and that this bill in equity is ancillary and dependent and intended to aid your orators' suit at law and remove the clouds upon said property placed thereon by the fraud and collusion of the defendants and to promote substantial justice.

7 Your orators further show that *he* verily believe that said Errmann & Meyer & Dreyfus will dispose of and part with said whiskeys during the pendency of this suit in order to complete said fraudulent transfer and possession and cause your orators irreparable injury and wrong unless restrained by injunction, and that your orators' rights are impeded, hindered, and delayed by the fraudulent sale and subsequent pledge and they are unable to obtain or pursue their rights so long as the same are not annulled and avoided, without which manifest wrong, injustice, and fraud will be triumphant.

In tender consideration whereof and forasmuch as defendants, colluding with each other, refuse to comply with your orators' rights

and requests or to desist from asserting their fraudulent title and claims thereon, but pretend that the said transfer, sale, and pledge are honest and fair, which your orators deny and charge the contrary to be the truth, and your orators are, they believe and aver, remediless in the premises and relievable only in a court of equity where matters of this nature are properly cognizable and relievable: To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed and may, upon their several and corporal oaths and according to the best and utmost of their several knowledge, remembrance, information, and belief, full, true, and direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; and may it please your honor to grant
8 unto your orators not only a writ of injunction, issuing out of and under the seal of this honorable court, to be directed to said defendants, Joseph Dreyfus, Abraham Ermann, and Lehman Meyer, to restrain them and their agents from disposing of and parting with the said whiskeys, and also the writ of subpœna commanding them and each of them, at a certain time and under penalty named, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises; and, further, to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem meet or shall seem agreeable to equity and good conscience, and that after due proceedings had the injunction be made perpetual and the transfer, sale, and pledge aforesaid be declared null and void and of no effect as being a fraudulent preference given to one creditor over another and prohibited by the laws of Louisiana; and your orators pray for costs and for all general and equitable relief.

(Signed) D. C. & L. L. LABATT,
Solicitors for Orators.

Personally appeared Julius Freiburg, a member of the firm of Freiburg & Workum, the members of which are complainants in the annexed bill, who, being duly sworn, says that all the facts and allegations in the said bill are true and correct, and that the matters and things therein stated as not within his knowledge
9 he believes them to be true and correct to the best of his belief and knowledge.

(Signed) JULIUS FREIBURG.

Sworn to and subscribed before me this day.
New Orleans, March 11, 1884.
[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

Interrogatories to Lehman Meyer, Def't in Pl'ffs' Bill of Complaint, to Answer under Oath within the Legal Delay and According to Law.

1st. Whether you are not the son-in-law of Joseph Dreyfus, the judgment debtor, and whether you were residing with your family in

his house, with him and his family, before, at the time, and since his failure, insolvency, and bankruptcy, or at the time of the various seizures of creditors made on or about 27th, 28th, & 29th Oct., 1883?

2d. Whether you were in daily communication and on good terms with your father-in-law and his family or knew of his being in trouble about that time and in very embarrassed circumstances or unable to meet his debts in money as they matured?

3d. Whether you were troubled, solicitous, or anxious about the payment of any alleged debt due you by Dreyfus or was pressing or urging him to pay you on Friday, 26th Oct., or Saturday, 27th Oct., 1883, and whether, from his inability to settle, you and he agreed to give and take in lieu of money any goods to the value of nearly $20,000; and, if so, annex an invoice thereof.

4. What proportion did the goods you so received bear to the balance of his visible stock in store at the time, whether ⅓, ¼, ½, or ⅝th, and its value compared with the remaining stock?

5th. State whether you urged a settlement of the alleged borrowed money claimed by you on Friday or Saturday, 26 & 27th Oct., 1883, and the cause or causes inducing you to press him so vigorously after being so lenient up to that time, and whether other creditors were pressing or preparing to take legal measures against him by seizures or attachments, sequestrations or other process, and whether you had knowledge or any apprehension of his financial inability to pay you or his other creditors in full.

6th. Whether the alleged sale to you and the hurried secret delivery at night were not all in consequence of Dreyfus' commercial trouble and on the eve of his failure, and that you were endeavoring to secure your debt or a large part thereof before the other creditors could enforce their claims thereon?

7. Whether during Sunday, the 27th, or on Sunday night, or on Monday, 29th Oct., 1883, you were aware of Dreyfus' store, 33 Tchoupitoulas St., being under seizure or in the hands of any officer?

8. Whether, during any or all of those days, you were under apprehension that Dreyfus' creditors would attack the transfer of said goods to you, and whether, in view of this fact, you did not write or telegraph to A. Ehrman to come to New Orleans in order to propose to him the transaction which followed?

9. Whether you wrote or wired Ehrman at Morgan City after or before Dreyfus proposed to turn over the goods in question? How came you to send or wire for Ehrmann before you claim to have spoken to Dreyfus to make this fraudulent transfer in the face of his anticipated failure?

10. Whether and when you knew or suspected that C. Gumbel, another son-in-law residing in New Orleans, had on Saturday, 27th Oct., 1883, a writ of attachment from the civil d't c't of New Orleans against said Dreyfus for about $25,000, and also whether you were aware of or heard or knew that Dreyfus had mortgaged his house and lot, in which he and you lived, for $15,000 on Saturday, Oct. 27th, 1883?

Interrogatories to A. Ermann, Def't.

1st. Whether you did not, on arrival in New Orleans, on the night of 28th Oct., 1883, take up your residence in Dreyfus' house as his guest and slept there?

2. Whether you knew of Dreyfus' failure and the disturbance which occurred at his store on the night of the 27th Oct., 1883, and on Sunday, the 28th Oct., 1883; whether anything unusual seemed to have taken place to disturb the family circle in which you were a guest?

3. Whether you did not before or at the time of your mak-
12 ing the transaction with Meyer know all about where he got the goods he proposed to pledge to you, and whether they were the same goods received from Dreyfus' store and found in 33 Decatur St., New Orleans, moved there during the night of the 27th or Sunday, 28th Oct., 1883? If nay, when and from whom did you first ascertain these facts?

4th. What investigation or enquiry did you make of Meyer as to the source and origin of his title to the goods claimed as pledged? In whose house were you when the documents of pledge and notes were made?

(Signed) D. C. & L. L. LABATT,
Solicitors for Complainants.

Order.

Let the def'ts show cause on the 22d day of March, 1884, why an injunction *pendente lite* should not be granted as prayed for in the *written* bill; meanwhile and until the further order of the court let the def'ts and each of them be restrained by a process to be issued by the clerk of the court according to the prayer of said bill of complaint.

March 14th, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

13 *Restraining Order. Issued March 14th,* 1884.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

JULIUS FREIBURG *et al*
vs.
JOSEPH DREYFUS *et al.* } No. 10505.

The President of the United States to Abraham Ermann, Greeting:

Whereas it has been represented unto us, in our said circuit court, on the part of Julius Freiburg and others, in a bill of equity lately exhibited against you and others touching certain matters and things

therein set forth; and whereas the Honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you are required to show cause on the 22d day of March, 1884, why an injunction should not issue as prayed for in said bill of complaint; and whereas the said judge has granted and allowed an order restraining you immediately and forthwith, and during the pendency of said motion for an injunction, to the full extent and effect as prayed for in said bill of complaint:

14 Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Abraham Ermann, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you and each of you absolutely refrain and desist from disposing of and parting with the twenty-nine barrels of whiskey sequestered by the complainants from Joseph Dreyfus in the suit No. 10378 of the docket of this court.

And that you remain so inhibited and enjoined until the further order of the court in the premises.

And that you, the said Abraham Ermann, your agents, attorneys, and servants, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

(Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received Mar. 14, 1884, by the U. S. marshal, and on March 15th, 1884, I served a true copy of the within injunction on Abraham Ermann, the person within named, by handing the same to him in person and leaving the same in his hands in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal, East. Dist. of La.

15 *Order. Injunction Allowed.*

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *March* 22*d*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

JULIUS FREIBURG *et al.*
vs.
JOSEPH DREYFUS *et als.* } No. 10505.

This cause came on to be heard on the application of the complainants for an injunction *pendente lite* and was argued by counsel;

whereupon, upon consideration thereof, it is ordered that an injunction *pendente lite* issue herein enjoining and inhibiting the defendants and each of them in manner and form and to the extent prayed for.

Injunction to Abraham Ermann and Lehman Meyer. Issued March 25th, 1884.

UNITED STATES OF AMERICA:

16 Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

JULIUS FREIBURG *et al.*
vs.
JOSEPH DREYFUS *et al.* } No. 10505.

The President of the United States to Abraham Ermann and Lehman Meyer, Greeting:

Whereas it has been represented to us, in our said circuit court, on the part of Julius Freiburg *et al.*, in a bill in equity lately exhibited against you and others touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Abraham Ermann and Lehman Meyer, your agents, attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from disposing of and parting with the twenty-nine barrels of whiskey sequestered by the complainants from Joseph Dreyfus in the suit entitled Freuburg and Workum *vs.* Joseph Dreyfus, No. 10378 of the docket of this court.

And that you and each of you remain so inhibited and enjoined until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of
17 the Supreme Court of the United States, at the city of New Orleans, this 25th day of March, in the year of our Lord 1884.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received Mar. 25, 1884, by the U. S. marshal, and on the 25th day of March, 1884, I served a true copy of the within injunction on L. Meyer, and on the 26th day of March, 1884, I served A. Ermann by handing the same to them in person.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Demurrer of A. Ermann. Filed April 12, 1884.

Circuit Court of the U. S., E. D. of La. In Chancery.

JULIUS FREIBURG *et al.*
vs.
JOSEPH DREYFUS *et als.* } No. 10505.

The demurrer of Abraham Ermann, one of the above-
18 named defendants, to the bill of complaint of the above-named plaintiffs.

To the Hon. E. C. Billings, judge :

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiffs' bill of complaint contained to be true in such manner and form as therein alleged and set forth, demurs to the said —, and for cause of demurrer shows—

That said bill does not contain any matter of equity whereon this court can ground any decree or give to the plaintiffs any relief against this defendant.

That they are not entitled upon said bill to the relief they pray for, because they had a plain and adequate remedy at law.

That the plaintiffs have not alleged nor does it appear by the said bill that they have sued out execution and actually taken out a *fieri facias*, nor do they allege nor does it appear that they have any judgment obtained, and that until they have so obtained judgment and issued execution thereon the goods whereof this defendant is the lawful pledgee are not bound nor the plaintiffs entitled to any discovery or relief.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and humbly demands the judgment of this court whether he shall make any further or other answer to said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained, and for general relief.

(Signed) SINGLETON, BROWNE & CHOATE,
Solicitors for A. Ermann.

I hereby certify that in my opinion the foregoing demur-
19 rers are well founded in law.

April 12, 1884.

(Signed) R. H. BROWNE, *Of Counsel.*

Abraham Ermann, being duly sworn, says the foregoing demurrers are not interposed for delay.

(Signed) A. ERMANN.

Subscribed and sworn before me April 12, 1884.

(Signed) E. R. HUNT,
Commissioner United States Circuit Court, District of Louisiana.

Demurrer of L. Meyer. Filed April 12, 1884.

Circuit Court U. S., Eastern Dist. La. In Chancery.

JULIUS FRIEBURG *et al.*
vs.
JOSEPH DREYFUS *et al.* } No. 10505.

20 The demurrer of Lehman Meyer, one of the above-named defendants, to the bill of complaint of the above-named plaintiffs.

To the hon. the circuit court:

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiffs' bill of complaint contained to be true in such manner and form as therein alleged and set forth, demurs to the said bill, and for cause of demurrer shows—

That said bill does not contain any matter of equity whereon this court can ground any decree or give to the plaintiffs any relief against this defendant.

That they are not entitled upon said bill to the relief they pray for, because they had a plain and adequate remedy at law.

That the plaintiff- *has* not alleged nor does it appear by their said bill that they have sued out execution and actually taken out a *fieri facias*, nor do they allege nor does it appear that they have any judgment obtained, and that until they have so obtained a judgment and issued execution thereon the goods whereof this defendant is the lawful owner are not bound nor the plaintiffs entitled to any discovery or relief.

Wherefore, and for divers other good causes of demurrer appearing in the said bill; this defendant doth demur thereto, and humbly demands the judgment of this court whether he shall make any further or other answers to said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained, and for general relief, &c.

(Signed) MORRIS MARKS,
A. H. LEONARD,
Solicitors for L. Meyer.

21 I hereby certify that in my opinion the foregoing demurrers are well founded in law.

Ap'l 12, 1884.

(Signed) A. H. LEONARD, *Of Counsel.*

L. Meyers, being duly sworn, says the foregoing demurrers are not interposed for delay..

(Signed) L. MEYER.

Demurrers Heard and Submitted.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, SATURDAY, *April 26th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

JULIUS FREIBERG *et als.*
vs.
J. DREYFUS *et als.*
No. 10505.

This cause came on to be heard on the demurrers to the bill and was argued by the counsel for the parties, respectively, and submitted, when the court took time to consider.

22 *Demurrer Overruled.*

Extract from the Minute Book, April Term, 1884.

NEW ORLEANS, TUESDAY, *May* 20, 1884.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

J. FREIBURG & *al.*
vs.
J'PH DREYFUS & *al.*
No. 10505.

This cause came on to be heard on the demurrer and was argued by counsel.

On consideration thereof it is ordered by the court that said demurrer be overruled, and that def'ts have until the next rule day to answer the bill.

Order Allowing Time, &c.

Extract from the Minute Book, April Term, 1884.

NEW ORLEANS, SATURDAY, *May* 31, 1884.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

23 J. FREIBURG & *al.*
vs.
J. DREYFUS & *al.*
No. 10505.

On motion of R. H. Browne, Esq., on behalf of Ermann, intervenor, ordered that he have until the 1st Monday in July, '84, to answer the complainants' bills.

Motion & Order to Bond, &c.

Extract from the Minute Book, April Term, 1884.

NEW ORLEANS, *June 13th*, 1884.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

J. FREIBURG
vs.
J. DREYFUS & *al.* } No. 10505.

On motion of Singleton, Browne & Choate, solicitors for A. Ermann, one of the defendants, for reasons assigned in writ-
24 ing, it is ordered that A. Ermann be permitted to bond said injunction as to said 9 barrels of whiskey by giving bond, with good and solvent security, in the sum of $632.24, said bond to stand in lieu of said whiskey.

Answer of A. Ermann. Filed July 7, 1884.

U. S. Cir't C't, E. D. of La. In Equity.

JULIUS FREIBOURG *et als.*
vs.
JOSEPH DREYFUS *et als.* } No. 10505.

The separate answer of Abraham Ermann to the bill of complaint of the complainants herein.

To the hon. the judges of the circuit court of the United States, fifth circuit, eastern district of Louisiana:

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

25 To the 1st paragraph of said bill: He admits that the plaintiffs have instituted a suit against Joseph Dreyfus for a large sum of money, but this respondent is not informed, concerned, and knows nothing of said claim, but avers that the plaintiffs have no vendor's lien on the property sought to be reached, and that there was no judicial recognition of the verity or validity of said claim when their said bill of complaint was filed; that he admits the sequestration of 29 barrels of whiskey in the suit at law by the plaintiffs against Joseph Dreyfus, No. 10378 of the docket of the circuit court of the United States for this district, wherein the plaintiffs claimed the vendor's lien and privilege on said whiskey under the laws of Louisiana; but this defendant avers that the sale of said

whiskey by complainants to said Dreyfus was made in Cincinnati, Ohio, and that the said goods were delivered in Cincinnati by plaintiffs to a common carrier, and bills of lading taken therefor, and said goods were marked J. D., N. O.; that there is no vendor's lien or privilege under the laws of Ohio, and the plaintiffs have no vendor's lien and privilege under the laws of Louisiana, said sale and delivery having been made in the State of Ohio; and this defendant further says that the plaintiffs *have* no lien and privilege whatsoever on said goods at the time said writ of sequestration was issued; that they were not by law entitled to said writ, but that the same was illegally and improvidently issued and the plaintiffs neither had at the time of the issuance of said writ nor have they acquired since any lien and privilege on said 29 barrels of whiskey.

And this defendant, further answering, says that he was not
26 on 29 October, 1883, at the time of making the transaction hereinafter particularly described and set forth, aware that Joseph Dreyfus was insolvent or on the eve of insolvency, or that he was attempting to remove, conceal, or part with, fraudulently or otherwise, his property, real or personal, and that it is wholly untrue, so far as is alleged in said bill of complaint, that this defendant was in any manner co-operating or confederating with the said Joseph Dreyfus or any other person whatsoever to enable or assist said Dreyfus to defraud his creditors or any one of them.

This defendant admits that said plaintiffs have charged in their said suit at law that this defendant's pledge by Lehman Meyer of certain goods and merchandize (to be more particularly described hereafter) was a pretended pledge, and not real, but fraudulent, illegal, and unjust, and concocted to hinder, delay, and obstruct plaintiffs in said suit, and entered into with full knowledge that this defendant was committing an act of fraud and simulation; all of which allegations, statements, and charges are wholly false.

And this respondent, defendant, further answers and says that he knows nothing of the legal validity of the sale from Joseph Dreyfus to Lehman Meyer of the goods and merchandize described and leaves the plaintiff to make such proof as they may deem proper; but this defendant avers that all his dealings and transactions with Lehman Meyer and the pledge of said goods and merchandize hereinafter described by said Meyer to this defendant were in the utmost good faith, for a valuable consideration, made and paid when
27 the said contract of pledge was entered into between Lehman Meyer and this defendant.

2. As to the matters in the second paragraph of said bill of complaint, this respondent is not informed and cannot answer, but he believes that there was real *bona fide* indebtedness by said Joseph Dreyfus to said Lehman Meyer in a large amount when said sale was made and the goods delivered, and he leaves the plaintiffs to administer such proof in reference thereto as they may deem proper.

3d. As to the matters in the 3d paragraph of said bill of complaint, this defendant has no personal knowledge as to some of them, but he is now informed and believes and so avers that Lehman Meyer obtained the possession of the greater portion of said goods

and merchandize hereinafter described in open, broad daylight on Sunday, and that the delivery thereof was well known to a number of the creditors of said Dreyfus, and that the delivery of the said goods and merchandize was not made on Saturday owing to the fact that it was the Jewish Sabbath.

And this defendant, further answering of his own personal knowledge, says that it is wholly false that there was any pretended pledge of said goods and merchandize by Lehman Meyer to this defendant, but the truth is that it was made in good faith and for the consideration of fifteen thousand dollars, paid by this defendant at the time to said Meyer.

That it is wholly false that this respondent was conveniently present, as is charged, to aid and assist in carrying out any scheme of wrong or fraud; that the fact is that defendant had long
28 and well known both Joseph Dreyfus and Lehman Meyer, his son-in-law; that he had had for a number of years with both of them large business transactions involving a great deal of money; that he had always found them upright and honest and fair in their business dealings; that his intimacy with said Dreyfus and said Lehman were such that he had for a long time prior to the 29th October, 1883, made the house of said Dreyfus his home when he visited New Orleans; that, as usual, on his arrival from his home in Morgan City in the city of New Orleans, about five o'clock in the afternoon of Sunday, 28th October, 1883, he proceeded to the house (from the Morgan railroad depot) of Joseph Dreyfus, arriving there a little before six o'clock p. m.; that this defendant then had no suspicion, information, or knowledge, directly or indirectly, that Joseph Dreyfus was in financial difficulty or insolvent, and was of the belief at the time that he was abundantly solvent; neither was there any appointment or request by or on behalf of Joseph Dreyfus or Lehman Meyer that this defendant should come to New Orleans at any particular time or date; that this defendant having transactions with Morgan's railroad had a "pass" over it, and his visit to New Orleans was under the same circumstances as he had made a great many times before.

That this respondent is and was wholly innocent of any scheme or plan or purpose to aid or assist, in any manner or way, the said Dreyfus and the said Meyer or either of them to defeat or defraud their creditors or any one of them, and if either or both of said defendants had any such object or plan all knowledge thereof was studiously concealed and kept from this defendant.

That the transaction or pledge by said Meyer to your pe-
29 titioner was in good faith, and this defendant did not lend himself in any way to said Dreyfus and said Meyer or to either of them or to anybody to carry out any scheme of collusion or fraud, or to enable any one to obtain an unjust advantage over complainants or any other person or persons, or to hinder them or any one else from pursuing or pursuit of any property belonging to said Dreyfus or said Meyer or either of them.

4. As to the matters in the 4th paragraph of complainants' bill, this defendant is not informed and cannot of his own knowledge

answer many of the matters therein, and will leave plaintiffs to make such proof as they may deem proper, but this defendant denies that said Meyer was insolvent on the 29th October, 1883, but avers that he continued to pay all demands against him, as a merchant or otherwise, until long after said date, to wit, in December, 1883.

And this defendant, further answering, says that Lehman Meyer, on the twenty-ninth day of October, 1883, prior to the sequestration issued in the case of Freiburg & Workum *vs.* J. Dreyfus, No 10378 on the law side of this court, borrowed of this defendant fifteen thousand dollars, part—$5,000—in cash, and for the remainder, ten thousand dollars, defendant furnished said Meyer his two promissory notes of five thousand dollars each, both dated October 29, 1883, and payable sixty and ninety days respectively after date, which notes this defendant paid at their respective maturities; and said Meyer gave to this defendant in evidence of said loan of $15,000 his three promissory notes, all dated October 29th, 1883, each for five thousand dollars and payable respectively 40, 60, & 75 days after date, with eight per cent. interest from maturity, and to secure the payment of said notes, principal and interest, he (said Meyer), by a clause in each of said notes and the endorsement of certain warehouse receipts, five in number, and the delivery of the same to this defendant, pledged the goods and merchandise hereinafter described more particularly to this defendant, and of which goods said pledger was then in possession and apparent ownership, said five certain warehouse receipts being executed by Meyer, Weil & Co. on the 28th day of October, 1883, in favor of Lehman Meyer and by him endorsed and delivered to this defendant, and was and is for the following-described goods stored in said Meyer, Weil & Co.'s warehouse, to wit:

" $\frac{5}{4}$ pipes B., D. & Co. cognac.
" 9 bbls. Smith Blair.
" $\frac{2}{8}$ pipes Gregorie cognac.
" $\frac{2}{8}$ pipes Boiteau.
" $\frac{3}{8}$ " kirschwasser.
" $\frac{2}{8}$ " port.
" $\frac{9}{8}$ " Parnet sherry.
" $\frac{4}{8}$ " Eldorado.
" 4 bbls. Monongahela XXX rye.
" 6 " Don Carlos.
" 6 " Imperial Cabinet.
" 5 " La Belle.
" 3 " Imperial Cabinet rye.
" 5 " Private Stock B.
" 2 " Defiance.
" 2 bbls. Gilt Edge.
" 6 " peach rum.
" 3 " Golden-Sheaf bourbon.
" 13 bbls. Monarch.
" $\frac{10}{8}$ London Dock gin.
" $\frac{4}{8}$ Otard Dupuy cognac.
" $\frac{4}{8}$ Hennessy.

"1 bbl. Incomparable.
"1 " Southern Home.
"20 baskets champagne.
"Thirty cases cigars in bad condition; show-cases broken."

Which said three notes of Meyer with said five warehouse receipts of Meyer, Weil & Co. are filed in suit No. 10371 on the law side of this court and are here referred to, and he prays that the same may be taken and considered as a part of this answer.

That said contract of loan and said pledge were not concluded between said Meyer and this defendant during the evening of October 28, 1883, but were consummated and perfected on the morning of the 29th October, 1883, prior to the issuance of the writ of sequestration in said cause at law, and said entire transactions and all the acts and doings of this defendant were *bona fide*, and were made without any knowledge of the insolvency of said Dreyfus by this defendant, or that said Meyer and said Dreyfus contemplated any wrong or fraud, and that, this defendant having made said loan in good faith and taken said pledge in like manner, he cannot be deprived of the benefits of said pledge to secure his said loan without being reimbursed the money so advanced and loaned by him to
32 said Meyer by the plaintiffs herein; that this defendant was at all times ready for months to surrender said goods upon being repaid his said loan, and retained said goods for many months after the proceedings to sequestrate them on the law side of the court by plaintiffs and others and until it became necessary to dispose of them in order to save them from deterioration and ruin.

And this defendant further avers that the validity of said pledge has already been passed upon by a jury in the cause entitled H. Weiller & Co. *vs.* J. Dreyfus; A. Erman, intervenor and 3rd opponent, No. 10371 of the docket of this court on the law side, and a judgment rendered therein decreeing the same a valid pledge and dissolving the writ of sequestration issued in said cause and the property sequestered to be delivered to this defendant.

6. To the 6th paragraph: That the matters herein alleged and pleaded are, so far as this defendant —, wholly false, and the facts are as are fully set forth in the preceding paragraphs of this answer, and that said sale and pledge should be maintained and enforced in favor of this defendant.

7th. To the 7th paragraph: That this defendant is not informed and cannot answer as to all the matters and things herein alleged, but he believes that said Dreyfus might have been able to pay the larger portion, if not all, his debts had it not been for the seizures made by his creditors, wresting all control of his property from him, and consuming the same with costs, and deteriorating its value by forced sales, and all the depreciations consequent upon legal
33 proceedings in all matters involving the affairs of a commercial house.

And your defendant further says that the plaintiffs have no standing in a court of equity either by an original or an auxiliary or ancillary bill, and that the injunction issued herein *pendente lite* was im-

providently granted and ought to be dissolved and this bill dismissed for want of equity.

And this defendant submits to this hon. court that all and every of the matters in said complainants' bill mentioned and complained of are matters which may be tried and determined at law and with respect to which the said plaintiffs are not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said plaintiffs' bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in said plaintiffs' bill of complaint contained material or necessary for this defendant to make answer unto and not herein and not hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his costs and charges *and*
34 in this behalf most wrongfully sustained, and for general relief.

(Signed) A. ERMANN.

(Signed) SINGLETON, BROWNE & CHOATE,
Solicitors for Def't, A. Ermann.

Sworn to and subscribed before me on this 3d day of July, 1884.
[SEAL.] (Signed) WILLIAM L. POOLE,
Notary Public.

See answers to interrogatories annexed.

Answers of A. Ermann, One of the Defendants Herein, to the Interrogatories Propounded to Him.

To interrogatory 1: I did. It had been my custom for a number of years to stop at the house of Joseph Dreyfus whenever I visited New Orleans.

To interrogatory 2: I did not know of the failure of Joseph Dreyfus or of any disturbance occurring at his store on the 28th October, 1883. So far as I could see, there was apparently no disturbance in the family circle.

To interrogatory 3: When I made the loan to Mayer and obtained the pledge from him I did not know "all about where he got the goods he proposed to pledge to me." He said he had a large lot of goods in the warehouse of Meyer, Weil & Co.; stated about their value, but did not say from whence they came or how he got them. I have known him a long time, had had many business transactions with him, and I had perfect confidence in him. There was
35 nothing to put me on inquiry. I know Meyer, Weil & Co. also very well and had known them for a long while, and knew that they were entirely reliable.

I first learned that these goods were those removed from Joseph Dreyfus' store on Monday morning, October 29th, 1883. My recollection is it was between 9 and 10 o'clock Monday morning when I first heard that the goods pledged to me were the same goods which had been removed from Dreyfus' store on Sunday, the preceding day. I heard that some of them had been removed at night, but that the great bulk of them had been removed during the day on Sunday. I do not remember who first told me of it. My impressions are I first saw it in the morning paper after I came downtown, as I have before stated. There was a great deal of talk about it during Monday, and I can't say who first mentioned it to me.

To interrogatory 4: I made no investigation or inquiry of Meyer concerning his title to the goods pledged. We had for a long while occupied very friendly relations toward each other. I trusted him implicitly, and I believed him to be perfectly solvent at the time, and as I knew of nothing to create or arouse my suspicions I made the transaction without hesitation, supposing that I was obliging a friend who at the same time was willing to secure me by the pledge he proposed.

The notes I gave to Meyer and the check for the cash I paid him as the loan and the three notes he gave me, with the endorsement of the warehouse receipt, were all made and signed in
36 the store of Lehman Meyer, No. 5 Tchoupitoulas street, in New Orleans.

(Signed) A. ERMANN.

Sworn to and subscribed before the undersigned and duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, at New Orleans, this July 2, 1884, as witness my hand and seal.

[SEAL.] (Signed) ANDREW HERO, JR., *Not. Pub.*

Separate Answer of Lehman Meyer. Filed November 1st, 1884.

U. S. Cir't Court, E. D. of La. In Equity.

JULIUS FREIBOURG *et als.* *vs.* JOSEPH DREYFUS *et als.* } No. 10505.

The separate answer of Lehman Meyer to the bill of complaint of the complainants herein.

To the hon. the judges of the circuit court of the United States, fifth circuit, eastern district of Louisiana:

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and exception to the
37 many errors and insufficiencies in the plaintiffs' said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material to make — thereunto, answers and says:

1. This defendant admits the institution of a suit by the plaintiffs

as alleged, on the law side of this hon. court, No. 10378 of the docket, on the 29 October, 1883, but this defendant is not informed and knows nothing of the correctness of the claim therein made, and therefore leaves the plaintiffs to make such proof thereof as they may be advised; and this defendant admits the sequestration of 29 barrels of whiskey in said suit under a writ of sequestration issued in said cause on the alleged ground that they had a vendor's lien and privilege; and this defendant avers that said allegation contained in said petition that they had a vendor's lien and privilege, was wholly false, but that the truth is the said whiskey with other whiskies were sold and delivered by the plaintiffs to Joseph Dreyfus, in the city of Cincinnati, State of Ohio; that under the laws of Ohio the plaintiffs had no vendor's lien and privilege, nor have they ever acquired any lien or privilege of any sort on said 29 barrels of whiskey since; that, as defendant is informed and believes, and he so avers, *that* all of said whiskey was bonded under the order of the court in said cause by one Abraham Ermann, the pledgee, and disposed of by him, excepting — barrels, long prior to the filing of this bill.

This defendant, further answering, admits that the pleadings and averments in said suit at law are substantially the same as they are herein in said bill stated to be.

2. This defendant, answering the second paragraph in said
38 bill, says that on the 26th October, 1883, and for some time prior thereto Joseph Dreyfus (his father-in-law), of this city, and one of the defendants herein, was indebted to this defendant in the sum of $26,663.48 for money loaned at various dates, as per exhibit to be hereafter filed as part of this answer; that some days prior thereto, being much in need of money, he requested and urged said Dreyfus to pay him said indebtedness; that said Dreyfus at first stated that he would have money in during the next week and would pay him, but respondent's wants were too pressing for him to defer or wait so long, and insisted that said Dreyfus should make arrangements to pay; that finally said Dreyfus offered to sell and deliver to this defendant a sufficient amount of goods to cover said indebtedness, and the price of which should go to the payment and extinguishment of his indebtedness to respondent; that this defendant did not at first accept said offer, but finally, on Friday afternoon, the 26th October, 1883, he determined to accept said offer, and so notified Dreyfus of his acceptance; that said goods and merchandize were to have been delivered to this defendant the next day, Saturday (27th October), and the sale completed, and this defendant endeavored to make arrangements with Meyer Weill, of Meyer Weill & Co., in whose warehouse he desired to store said goods and merchandize, to have their warehouse opened on Saturday, but said Weill, being a strict Jew, declined to open their warehouse on Saturday or to permit respondent the use of their key for that day, and informed respondent that he could have the key on Sunday or as soon after midnight Saturday
39 night as he desired it; that respondent, being anxious to go on Sunday morning to Thibodeaux, La., where he had a store

and near by a plantation, by the seven o'clock train (as he had often done), made arrangements to get Weil & Co.'s warehouse key, and to receive, move, and store said goods and merchandize in Weil & Co.'s warehouse before seven o'clock Sunday morning, the time of the departure of the train for Thibodeaux; that to do this it was necessary to begin receiving them as soon after midnight as possible; that this defendant made his arrangements accordingly, and some time after midnight (about 3 o'clock, this defendant believes) said Dreyfus began the delivery of said goods and merchandize from his store, No. 33 Tchoupitoulas —, in this city, and this defendant to receive and remove said goods and merchandize to the warehouse of Weill & Co., No. 34 Decatur street and — Clinton St.; that only three dray-loads of said goods and merchandize had been delivered by said Dreyfus to and received by this defendant when the further delivery and receipt were stopped either by the police or by a deputy marshal of the United States; that the delivery was discontinued until after daylight Sunday morning, when, the deputy marshal being satisfied that he had no authority to stop the delivery, it was resumed and continued until about 11 o'clock in the morning, when all further delivery was stopped by the seizure of the store of said Dreyfus, with its contents, by the United States marshal under various writs of attachment sued out in the United States court (among the number the plaintiffs in this cause procured a writ of attachment in suit No. 10369 of the docket of this court); that
40 when said marshal levied said writs and forced the discontinuing of further delivery to this defendant only nineteen thousand nine hundred and twenty-seven $\frac{87}{100}$ dollars' worth of said goods and merchandize sold by said Dreyfus as aforesaid to this defendant on the 26th October, 1883, had been delivered to this defendant and removed and stored in said Weill & Co.'s warehouse, a full and complete invoice of which, with quantities, marks, and prices, is attached to the answers of this defendant to the interrogatories propounded to him as garnishee in the suit of Lachman & Jacobs *vs.* Joseph Dreyfus, No. 10365 of the docket of this court, and to which this defendant refers and craves may be taken and considered as a part of this his answer.

And this defendant, further answering, says that his object in having said goods and merchandize stored in a warehouse instead of his own store was to enable him to use the receipts therefor to pledge them and raise money on them.

Further answering, defendant says that it is wholly untrue that he was aware of the insolvency on the 26th or 27th October, 1883, of Joseph Dreyfus or of his impending bankruptcy on either of those days or prior thereto, and he avers that when said sale was made by said Dreyfus to this defendant he believed that said Dreyfus was solvent and able to pay his debts, and that there was no intention on the part of this defendant to obtain any unjust preference over any other creditor or creditors of said Dreyfus, nor to do any act to their injury, nor did this defendant believe at the time that he was doing any act or thing to the detriment, wrong, or injury of
41 any one, and that the entire transaction, so far as this defend-

ant was concerned, was in good faith and without collusion or confederacy with any one; that when Dreyfus made the sale as aforesaid, so far as defendant knew or believed, the valuable real estate of said Dreyfus had no encumbrance on it whatever, and everything he had heard Dreyfus say induced him to believe Dreyfus was solvent.

3. To the 3rd paragraph of said bill defendant answers and says that the delivery of the goods and merchandize sold as aforesaid by said Dreyfus to him was not secret; that only three dray-loads (which was a small portion of them) were removed during Saturday night, and that was known to many persons, and the remainder (the great bulk of them) were delivered from Dreyfus' store, situated on one of the most public business thoroughfares of New Orleans, in broad, open daylight, in the presence and to the knowledge of many persons, and without any concealment or attempt at concealment or secrecy whatever, and that the delivery of goods or the sale of them is not anti-commercial or unusual on the Christian Sunday among the Jewish people of New Orleans, to which race this defendant belongs by birth and religion, and it is a common thing for stores belonging to Jews to be kept open on Sundays in this city; that it is wholly untrue that the delivery of said goods and merchandize was made by Dreyfus to this defendant on Sunday to avoid judicial process, but it was solely for the reasons set forth in answer two above.

This defendant avers that the plaintiffs herein actually sued out judicial process on that day and caused the store of Dreyfus to be attached under it.

42 And this defendant, further answering, says that it is wholly false that he made any pretended pledge of the goods and merchandize bought by him on the 27th October, 1883, and delivered to this defendant by Joseph Dreyfus on the 28th October, 1883, but the truth is, and this defendant avers, that having caused said goods and merchandize to be stored in the warehouse of Meyer Weill & Co. he received from them five warehouse receipts therefor during the afternoon or evening of October 28th, 1883 (which warehouse receipts are on file in suit No. 10371 of the docket of this court, marked D, E, F, G, & H); that about the time or shortly after he received them he requested Abraham Ermann, who had arrived in New Orleans that afternoon, to loan defendant fifteen thousand dollars on said goods and merchandize; that no conclusion was reached or contract was made that night, but early on Monday morning, the 29th October, 1883, as the said Ermann and this defendant rode down-town together, said Ermann agreed to make this defendant said loan in the following manner, five thousand dollars cash and two notes, each for five thousand dollars, due, respectively, 60 and 90 days after date, with eight per cent. from date, upon this defendant executing and delivering to said Ermann his three several promissory notes, each for the sum of five thousand dollars, all dated October 29, 1883, due, respectively, 45, 60, & 75 days after date, with eight per cent. interest, each bearing on its face the pledge of the goods and merchandize, and upon the endorsement and delivery

to said Ermann of said five warehouse receipts, signed by
43 Meyer Weill & Co. and dated October 28, 1883, which two notes aforesaid were made by said Ermann and delivered to this defendant with five thousand dollars in cash (paid by check), constituting the said loan, and said three notes aforesaid were executed by this defendant with the proper endorsements thereon, and the five warehouse receipts endorsed and all delivered by this defendant to said Ermann before nine o'clock on Monday morning, October 29, 1883.

That said loan was actually made by said Ermann to this defendant upon said notes, with pledge and the delivery and pledge of said warehouse receipts aforesaid, and this defendant has received from said Ermann the whole of the said fifteen thousand dollars and applied the same to his own use and benefit in the payment of his debts.

And this defendant further says that the loan and said pledge made to secure the repayment thereof to Ermann were made in good faith, and, so far as this defendant is informed, believes, and knows (and he so avers), said Ermann acted in good faith and knew nothing of the financial difficulties of Joseph Dreyfus when said loan was made and said pledge effected.

Further answering, this defendant says that he had written in the early part of the week ending October 28, 1883, to Abraham Ermann, at Morgan City, where he had long resided, requesting him to come down to New Orleans; that his object in doing so was, in case of necessity, to obtain from him a loan of money, as Ermann had often loaned him before; that he did not indicate to Ermann what he wanted to see him for nor any particular day that he
44 wanted him to come; that Ermann had long been an intimate friend of defendant's father-in-law, Joseph Dreyfus, and of this defendant, and had for many years always stopped and stayed at Dreyfus' house whenever he visited New Orleans; that Ermann came down on Sunday afternoon of October 28, 1883 (as he had often come on Sundays previously), and immediately came to Dreyfus' house, as usual; that when defendant requested Ermann to come he did not know that he should have any goods which he could pledge to him as security for a loan, but that he expected to get him to help him in a friendly way with a loan without security, as he had often done before, in case this defendant could not make any other arrangements.

4. This defendant, answering the 4th paragraph of said bill, says that the delivery of the goods and merchandize aforesaid by said Dreyfus and the sale thereof to this defendant were actual and real, and the pledge thereof was, as this defendant then believed and now believes and avers, good and valid and for a valuable consideration and were *bona fide* and complete.

5. This defendant, answering the 5th paragraph of said bill, says that the sale, delivery, price, loan, and pledge were real and made in good fath, so far as this defendant is informed or believes, and he so avers, and that he believes and avers that Abraham Ermann had no knowledge or suspicion when said pledge was made that said

Dreyfus was insolvent or contemplated insolvency, or that said Dreyfus had made the sale of said goods and merchandize to this defendant in view of any contemplated bankruptcy or to
45 give any unjust preference to any one of his creditors over another; and this defendant, for himself, says it is wholly untrue that he knew or even suspected when Joseph Dreyfus made the sale to him on the 26th October, 1883, that he (said Dreyfus) was insolvent, or that he contemplated bankruptcy.

6. This defendant, answering the 6th paragraph of said bill, says that it is wholly untrue that this defendant illegally, fraudulently, and collusively combined with Joseph Dreyfus and Abraham Ermann or either of them or with any other person or persons whatsoever to make the sale and pledge hereinabove referred to and described; and the truth is that, so far as this defendant is concerned, they were made in the utmost good faith and without any collusion with any one whatsoever.

7. To the 7th paragraph of said bill this defendant answers and says that while it may be true that Joseph Dreyfus was insolvent when he made the sale aforesaid to this defendant, yet this defendant had no knowledge of it whatever; on the contrary, from said Dreyfus' declarations to Mr. Marinoni, the president of the People's Bank, made during the week of the said sale or only the week before, this defendant was led to believe and did believe that Dreyfus was and would be able to pay his said debts, and that, so far as this defendant was concerned, no fraud was contemplated or perpetrated, and that said sale should not be set aside nor said pledge to said Ermann annulled.

And this defendant further says that, according to the plain-
46 tiffs' own averments, they have a full, complete, and adequate remedy at law.

And this defendant further answers and says that the plaintiffs have no equity, and whatever relief they are entitled to, if any they have, is on the law side of the court, where the court is fully competent to give and decree all such relief as they may be entitled to have and obtain.

And defendant, further answering, says that the complainants herein are not entitled to any relief in a court of equity, for the reason that they never had any lien on the goods, wares, and merchandise sequestrated herein when in the possession and ownership of Joseph Dreyfus; that they had not acquired any since the sale and delivery thereof by Joseph Dreyfus to this defendant by any process of court or judgment; and this defendant submits to this hon. court that all and every of the matters in said complainants' bill mentioned and complained of are matters which may be tried and determined at law and with respect to which the said plaintiffs are not entitled to any relief from a court of equity, and this defendant hopes that he shall have the same benefit of this defence as if he had demurred to said plaintiffs' bill of complaint.

And this defendant denies all and all manner of unlawful combination and confederacy and fraud wherewith he is by said bill charged, without this, that there is any matter, cause, or thing in

said plaintiffs' bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and not hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this de-
47 fendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this hon. court shall direct, and humbly prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained, and for general relief.

(Signed) L. MEYER.

(Signed) SINGLETON, BROWNE & CHOATE, *Solicitors.*

1. I am the son-in-law of Joseph Dreyfus. My family and I resided in his house with his family for some time previous to and during the period in which his store was seized, and remained in the house with him until he left New Orleans, in March, 1884. We were there during the 27, 28, and 29th October, 1883.

2. I was on good terms with my father-in-law and in daily communication with him. I knew nothing of his being in any serious trouble until his creditors attached his store. Up to the 28th October, 1883, I am informed that he had met all his outstanding obligations which were due, except mine, as they had matured. I knew he was not under protest and was not when the attachments were levied. He had no paper then due, nor had he extended any of his paper nor deferred payments, as far as I knew. I had heard during the week ending 26th October, 1883, that some of the drummers had been offering his paper (at a heavy discount), which was
48 not due for 60 or 90 days. Mr. Marinoni, president of the People's Bank, came to Mr. Dreyfus and in my presence asked Mr. Dreyfus what it meant and whether he was in trouble, and offered Dreyfus assistance if he needed it; offered to loan him $15,000 on his house, but Mr. Dreyfus declined his offer and simply said, I will pay my debts as they fall due.

3. The reason I pressed him for a settlement was that I needed money very much myself, and it was absolutely necessary that I should have it. His reply at first was that he would have money coming in next week. I told him it was impossible for me to wait. He finally offered to pay me by selling me goods and I accepting them in payment of the debt he owed me. At the time he owed me $26,663.48. I did not accept his offer at first, but on Friday, the 26 October, 1883, I made up my mind to buy the goods. I cannot say that the talk I had heard did not influence me in doing this, but my chief moving cause was my own necessities. I thought Mr. Dreyfus was solvent. I had heard that one Wm. Stern had been talking a great deal about Mr. Dreyfus' financial condition, but I knew of nothing to prove to me that he (Dreyfus) was insolvent. He certainly did not say that he was. On the contrary, he said that he could pay his debts. It was Friday afternoon when I agreed to buy the goods, and they would have been delivered on Saturday; but, it being the Jewish Sabbath, I could not obtain the keys of Meyer Weil & Co.'s warehouse, where I intended to store

them, nor would Meyer Weil & Co. permit his warehouse to be opened. I determined to place them in a warehouse where I could get warehouse receipts, so as to raise money on the goods. I could not have done that if I had put them in my own store.

Not being able to move them on Saturday, and intending to leave for Thibodeaux (where I had a store) early on Sunday morning, I made arrangements to move them Saturday night, so as to complete their removal before I left town. I tried to do so, but only succeeded in moving three dray-loads, and was compelled to defer my trip to Thibodeaux, and the remainder of the goods were being delivered to me on Sunday morning by Mr. Dreyfus, and the delivery was stopped by the seizure of Dreyfus' store by the U. S. marshal, and I did not finish moving and storing those delivered to me in Weill & Co.'s warehouse until about 11 o'clock in the forenoon of Sunday, October 28, 1883.

Mr. Dreyfus offered to sell me the goods and I agreed to take them, the price to be in payment of what he owed me. I suppose he did this because he did not then have the cash to pay me. I should certainly have preferred the money. I annex a copy of the invoice—rather it is annexed to my sworn answers in the case of H. Weiller & Co. *vs.* Dreyfus, No. 10371 of the docket of this court—and I beg that it may be taken as my answer hereto.

4. I think about one-third. The remaining goods in Dreyfus' store were seized and sold at marshal's sale, realizing a very insignificant sum, not much over 30% of their real value, I should think. It may have been as much as 40% they sold for.

5. I had urged Mr. Dreyfus to pay me not only the borrowed money but all that he owed me, when on Friday I accepted the offer he made me to sell the goods. I was lenient with Mr. Dreyfus as long as my own wants would permit me to be. Excepting the offers to sell his paper, which I have before mentioned, I knew of no creditors pressing the payment of their debts, because none were due up to the time I determined to buy the goods on Friday; and I did not know of any preparing to take legal steps, by attachments or otherwise, until Sunday, the 28th October, 1883. Mr. Dreyfus never communicated to me, directly or indirectly, that he was insolvent, but left the impression upon my mind whenever his business was talked about that he was solvent—able to pay all his debts.

6. The sale to me was not made in consequence of Mr. Dreyfus' financial troubles. He had no paper out which was matured, nor was he under protest when the seizures were made. My recollection is that none of the paper became due until several days after the seizure. Neither the sale of the goods nor the removal thereof was made in consequence of Dreyfus' impending failure. So far as I knew, there was no impending failure. I have fully stated all the circumstances in my answer to the 3rd interrogatory above. The sale by Dreyfus to me was not made to secure my debt before the other creditors could enforce their claims against Dreyfus or his

property, for I had no idea at the time that his other creditors could or would take any steps to enforce their claims, and I thought Mr. Dreyfus could pay all his debts.

7. I was aware of the seizures of Dreyfus' store on Sunday and Monday. On Sunday the further delivery of goods by Mr. Dreyfus to me was stopped by the marshal about 11 o'clock Sunday morning. The quantity of goods Dreyfus had sold me on Friday were not all delivered to me at 11 o'clock on Sunday morning,
51 when the marshal stopped the further delivery.

8. I did not have any apprehension that Dreyfus' creditors would attach the sale by Dreyfus to me, because I believed the sale was a good and valid one. I knew that Dreyfus' indebtedness to me was just and I knew that I had made the transaction in good faith, and it was not from any such apprehension that I wrote to Ermann to come down to New Orleans. When I wrote to him I did not know what, if any, arrangements I could make with Mr. Dreyfus so as to get money from him. Ermann had loaned me money several times before and I wanted to see him to ascertain if I could get money from him. I did not tell him why I wanted to see him nor did I ask him to come any particular day. When I wrote to him I did not know that I would be in a position to make any such transaction as I made with him on Monday morning, October 29, 1883.

9. I wrote Ermann to come down before I had made up my mind to accept Dreyfus' offer to sell me the goods, but after Dreyfus had made me the offer I have already stated why I wrote Ermann in my answer No. 8 above.

I have never said, as I remember—certainly if I did say so I was in error—that I wrote Ermann before Dreyfus offered to sell the goods to me. I wrote Ermann after Dreyfus' offer, but before I had made up my mind to accept it. I did not think nor did I know the sale by Dreyfus to me was fraudulent, nor did I think or know that he anticipated failing.

10. I did not know that C. Gumbel had obtained a writ of attachment on Saturday, October 27, 1883, against Dreyfus or his
52 property until Monday, October 29, 1883, nor of any preparation he had made or contemplated making to do so. I was utterly ignorant of Dreyfus mortgaging his house on Saturday. The first I knew of it was on Monday following, October 29th.

(Signed) LEHMAN MEYER.

Sworn to and subscribed before the undersigned, a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, at New Orleans this July 26, 1884, as witness my hand and seal.

[SEAL.] (Signed) ANDREW HERO, JR., *Not. Pub.*

Replication to Answers. Filed Nov'r 5, 1884.

U. S. C't C't, E. D. of La., & 5th C't. In Equity.

JULIUS FREIBURG *et als.*
vs.
JOSEPH DREYFUS *et als.* } No. 10505.

The replication of Julius Freiburg *et als.*, pl't'ff-, to the answers of A. Ehrman, def't, and L. Meyer.

This repliant, saving and reserving to themselves all and
53 all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto and that the said answer of the said defendant is uncertain, evasive, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) J. FREIBURG ET ALS.,
By D. C. & L. L. LABATT,
Solicitors for Pl't'ff.

Order. Leave to Amend Bill.

Extract from the Minute Book, November Term, 1884.

NEW ORLEANS, MONDAY, *December 8th*, 1884.

54 Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

H. WEILLER *et al.*
vs.
JOSEPH DREYFUS *et al.* } No. 10521.

This cause came on to be heard on the plea and answer herein filed by the defendants, and was argued by counsel.

And the court, having considered and being advised in the premises, doth order and decree that complainant-, on payment of costs, do have leave to amend *his* bill by setting forth all facts and circumstances which preceded the rendition of the judgment at law.

Amended Bill and Affidavit. Filed Dec. 12, 1884.

H. WEILLER *et al.*
vs.
J. DREYFUS *et al.* } No. 10521.

To the honorable the judges of the circuit court of the United States for the 5th circuit & eastern district of Louisiana:

In Equity. No. 10521.

55 H. WEILLER & *al. vs.* JOS. DREYFUS *et al.*

The amended bill of complainants, Herman Weiller & Henry Freiberg, citizens and residents of Philadelphia, Pennsylvania, under the firm — of H. Weiller & Co., against Joseph Dreyfus, a citizen of Louisiana; Abraham Ehrmann, also a citizen of Louisiana, residing in Morgan City, parish of St. Mary's, in said State; Lehman Meyer, a citizen of Louisiana, residing in New Orleans, and Meyer Weil and David Levy, citizens of Louisiana, and residing in New Orleans, in compliance with leave granted by this hon'ble court on 8th Dec., 1884, humbly shows—

That in suit No. 10371, in the United States circuit court for the eastern district and 5th circuit of Louisiana, entitled H. Weiller & Co. *vs.* Jos. Dreyfus, on the law side, your orators, as complainants, instituted an action against Joseph Dreyfus, their debtor, and, having fully complied with the requisites of the law, and on giving proper bond, obtained a writ of sequestration, asserting the lien and privilege of vendor, and, after certain goods, wares, and merchandize were fully identified in the original packages by your orators, the same were duly seized and taken into possession by the marshal of said honorable court, your orators as pl't'ffs alleging that said merchandize was unpaid for and had been fraudulently and surreptitiously removed to the store of Meyer Weil and David Levi, 34 Decatur St., by said Dreyfus on or about the 27th Oct., 1883, soon after midnight, and on Sunday, 28th, '83, in order to defraud your orators, the pl't'ffs therein. Your orators aver that the goods so

56 identified and seized consisted of a part of the quantity sold Dreyfus and unpaid for and were as follows: Three barrels imported cabinet whiskey, 142 gallons; five barrels private stock B, 240 gallons whiskey, and two barrels private stock A, 94.2 gallons whiskey, and were valued at 1,216.35 dollars, as per appraisement; that said barrels had private marks and numbers placed thereon by pl't'ffs, by which they were clearly identified as the goods sold and delivered by your orators to Dreyfus, and which were never paid for in whole or in part, and that he was indebted to your orators in the full sum of twenty-six hundred and forty-six $\frac{95}{100}$ dollars, in his promissory note dated 1st Sept., 1883, payable 4 months after date to complainant's order, and remains still due and owing.

Now, your orators aver that in said suit one Abraham Ehrman, made def't in the original bill herein, intervened therein as pl't'ff

in 3d opposition, setting up and alleging a transfer by virtue of an alleged pledge of these goods from one Lehman Meyer. Your orators aver that to this intervention they answered and plead a special and general denial as follows:

Respondents admit that as creditors of Joseph Dreyfus they instituted suit and sequestered certain goods on which they claim the vendor's lien and privilege, and that same were seized by the marshal under the following circumstances: That early on Sunday morning, the 28th Oct., 1883, the citizens of New Orleans generally and the creditors of Joseph Dreyfus were informed that during the night-time and soon after 12 o'clock of the 27th Oct., 1883, said
57 Dreyfus was fraudulently and clandestinely moving his stock of goods from his store on Tchoupitoulas street to a store on Decatur St., in New Orleans, occupied by Meyer Weill & David Levi as a hardware store, and that he was aided and assisted by one Lehman Meyer, of New Orleans, the alleged pledgor of intervenor & 3d opponent.

That while in the act and after several float-loads of goods had been driven off and unloaded at 34 Decatur St. said Dreyfus was arrested in further removing the balance of his stock until certain creditors obtained writs of attachment from this honorable court early on Sunday, 28th Oct., 1883, and the marshal took and held possession of the store on Tchoupitoulas St. and placed said store and contents under seizure.

That soon after writs of attachments were taken out by pl't'ffs (your orators), and Meyer Weil & David Levy were made garnishees and duly served; that under the writ of sequestration resp'd'ts (your orators) identified by marks and numbers ten barrels of their whiskey which had thus been fraudulelty removed by Dreyfus in the dead of night, as fully stated in the original bill herein filed.

That resp'd'ts (your orators) denied that the ownership or possession ever legally passed to said Lehman Meyer or said Ehrman, or that said ownership or possession was open, continuous, or uninterrupted, so as to change the title of Dreyfus, and averred that the attempted delivery was simulated, collusive, and fraudulent, and that said Meyer & Ehrman were aiding and assisting said Dreyfus
58 to commit a vile fraud; that their acts and doings were pursuant to a scheme to screen and conceal the property from the pursuit of the just creditors of Dreyfus, and said Lehman Meyer's title to possession, through whom intervenor claims, was a sham and simulation; that it is false and fraudulent to claim that said Meyer & Ehrman did not well know all these facts before and at the time of the pretended loan he sets up, and that it is not true that intervenor holds a valid pledge thereon, because the failure and conduct of Dreyfus were notorious over the city, was town talk, and widely published in the daily newspapers on Sunday and Monday of Oct. 28 & 29, 1883. Your orators further aver that Dreyfus at the time of his said interruption claimed ownership and control of said goods, and insisted and proclaimed he could do as he pleased with his own goods. Wherefore resp'd'ts, your orators, in said suit joined issue with intervenor and prayed that his

pretended pledge be adjudged a simulation, null and void, and illegal, and for judgment in their favor, all which will more fully appear by the record aforesaid.

Now, your orators further aver and charge that said cause on the law side of this honorable court was tried before a jury, his honor Judge E. C. Billings presiding alone; that after said intervenor had adduced evidence to show the reality of the transfer and pledge claimed by him therein and on pl't'ffs and resp'd'ts (your orators herein) offering evidence to prove that said transfer and pledge were fraudulent and collusive, said intervenor objected to such evidence on the ground that the issue of the fraudulent and collusive nature of said transfer and pledge could not be tried or en-
59 quired into in said proceedings, and that a direct action to annul said transfer and pledge was necessary to declare their nullity, which objection was sustained by the court, and the evidence excluded on that ground and on the further ground that the United States circuit court, sitting as a court of law, was incompetent to pass upon the question of fraud and collusion, because its jurisdiction on the law side was limited to the issue of simulation, and his honor presiding felt obliged and did refuse to permit complainants to examine or offer proof in any degree in said proceedings of the question of fraud and collusion, and so charged the jury that the only issue submitted to them and within their power to determine was that of simulation and not of fraud or collusion, and the honorable court further stated that the question of fraud could only be set up and decided on the equity side of said court and by a bill in chancery, which ruling necessitated and obliged the jury to bring in a verdict such as was rendered and described in def'ts' plea as the foundation of the judgment therein rendered.

Your orators aver that his honor presiding so substantially instructed the jury, and the question of fraud as averred in the original bill was never passed upon or adjudicated by said jury verdict or record and was unexaminable in a court of law, all which is well known to his honor who presided at said trial and who now presides as chancellor in this hon'ble court and cause.

That all these facts and circumstances anteceded the filing of the original bill and produced *and* verdict and judgment plead by def't, Ehrman, and were a hindrance and impediment to
60 your orators' rights, which were not susceptible of being examined or removed, and left them without adequate remedy, except in a court of chancery and according to equity and justice, and would have been set up but for the fact that they were well known both to the def't Ehrman, his counsel, and to the court, although they do not all appear on the face of the record in said suit, because it was unappealable, and the objections to and rulings upon the exclusion of said evidence and the charge to the jury do not appear in writing; and your orators further aver and charge that said objection to the issue of fraud and collusion which was tendered by complainants in said suit at law having been made by said Ehrman, intervenor and def't, now having been maintained upon his objection, said Ehrman is estopped both in law and equity

from setting up; that said issue was finally passed upon and determined in said proceedings at law in his favor and from pleading the same in bar to the original bill of these complainants, and to do so is against good conscience, equity, and justice.

Wherefore complainants reiterate the charges, averments, and allegations of their original bill and this amended bill and pray that this amended bill be filed in compliance with the leave of the court herein granted; that service of process and subpœna be made according to equity, and that after due proceedings your orators have relief as prayed for in the original bill, and for all further orders as the court may deem meet and proper, and for costs and general and equitable relief.

(Signed) D. C. & L. L. LABATT,
Solicitors for Orators.

61 *Affidavit.*

Personally appeared David C. Labatt, who, being duly sworn, says he is a member of the above firm as solicitors for complainants in the foregoing amended bill and duly authorized thereto; that the complainants are all absent from the State; that his firm are duly authorized to appear and file said amended bill, and that all the facts and allegations therein are true and correct to the best of his knowledge and belief, and that such matters therein stated as not within his knowledge he believes them to be true and correct.

(Signed) D. C. LABATT.

Subscribed and sworn before me December 12, 1884.

(Signed) E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Service accepted for A. Ehrmann.

(Signed) SINGLETON, BROWNE & CHOATE,
Solicitors.

N. O., Dec. 12, '84.

62 *Motion to Fix.*

Extracts from the Minutes, April Term, 1885.

NEW ORLEANS, SATURDAY, *June* 20, 1885.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

J. FREIBOURG *et al.*
vs.
JOSEPH DREYFUS *et als.* } No. 10505.

On motion of Singleton, Browne & Choate, attorneys for defendants, it is ordered that the foregoing cause be set down for hearing on Monday, June 29, 1885, at 11 a. m., and that Messrs. D. C. & L. L. Labatt, counsel for complainants, be notified thereof.

Continuance.

Extract from the Minute Book, April Term, 1885.

NEW ORLEANS, MONDAY, *June* 29, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG *et al.*
vs.
JOSEPH DREYFUS *et al.* } No. 10505.

On joint motion of counsel for the respective parties it is ordered — the above cause be continued to Wednesday next, 1st proximo, at 11 a. m.

Continuance.

Extract from the Minute Book, April Term, 1885.

63 NEW ORLEANS, WEDNESDAY, *July* 1, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG
v.
JOSEPH DREYFUS *et al.* } No. 10505.

On joint motion of counsel for the respective parties it is ordered that the foregoing cause be continued until next Monday, the 6th instant, at 11 a. m.

Continuance.

Extract from the Minute Book, April Term, 1885.

NEW ORLEANS, MONDAY, *July* 6, 1885.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

JULIUS FREIBURG *et al.*
v.
JOSEPH DREYFUS *et als.* } No. 10505.

The foregoing cause was called for trial, and the absence of David C. Labatt, one of the counsel, having been suggested, who is now ill, ordered that said cause be continued indefinitely.

64 *Continuance.*

Extract from the Minute Book of November 2nd, 1885.

JULIUS FREIBURG *et al.*
vs.
JOSEPH DREYFUS *et al.* } No. 10505.

On motion of Singleton, Browne & Choate, solicitors for A. Er-

mann *et als.*, defendants, it is ordered that this cause be assigned for trial on Thursday, the 12th day of November, 1885, at 11 o'clock a. m., and that the parties plaintiff be notified hereof.

Continuance.

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, THURSDAY, *November* 12, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG *et al.*
vs.
JOS. DREYFUS *et al.* } No. 10505.

On motion of Singleton, Browne & Choate, solicitors for de-
65 fendants, counsel for complainants being present, it is ordered that this cause, heretofore set down for trial this day, be continued until Saturday, 14th inst., at 11 a. m.

Continuance.

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, SATURDAY, *November* 14, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG *et al.*
vs.
JOSEPH DREYFUS *et al.* } No. 10505.

On motion of Singleton, Browne & Choate, solicitors for defendants, counsel for plaintiffs being present in court, it was ordered that the foregoing cause be continued until the 25th instant, at 11 a. m., to be taken up with preference.

Continuance.

Extract from the Minute Book, November Term, 1885.

66 NEW ORLEANS, WEDNESDAY, *November* 25, 1885.

Court met pursuant to adjournment.
Present: Hon Aleck Boarman, district judge.

JULIUS FREIBURG *et al.*
vs.
JOS. DREYFUS *et als.* } No. 10505.

This cause came on to be heard at this term on the bill, answers, replication, and other proceedings in the cause; whereupon the court ordered the same to lay over until to-morrow at 11 a. m.

Continuance.

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, THURSDAY, *November* 26, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG *et als.*
vs.
JOSEPH DREYFUS *et als.*
No. 10505.

By consent of counsel for the respective parties this cause is continued until Monday next, the 30th instant, at 11 a. m.

67 *Hearing and Continuance.*

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, MONDAY, *November* 30, 1885.

Court met pursuant to adjournment.
Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG & *al.*
vs.
JOSEPH DREYFUS *et al.*
No. 10505.

This cause came on to be heard at this term on the bill, answers, replication, and other proceedings in the cause.

Whereupon the complainants offered the following evidence in support of their bill, to wit:

1st. Deposition of E. T. Florance.
2d. Deposition of William Stern.
3d. Deposition of D. C. Labatt.
4th. Deposition of S. Mendelson.
5th. Deposition of George H. Theard.
6th. Deposition of Joseph Morris.
7th. Deposition of J. A. Dare.
8th Deposition of W. O. Hart; also,
9th. The records in the case of S. Jacoby against J. Dreyfus *et al.*, and Freiburg & Workum, Nos. 10— of the U. S. circuit court, and the affidavits filed, as per agreement.

68 10th. Also agreement of defendants' counsel in the evidence taken by them.

11th. Also records of suit S. Gumbel, No. 9663 of the civil district court, and the attachments in cases 10355 and 10359.

12th. Also record in C. Gumbel against J. Dreyfus, No. 9662 of the civil district court.

And the defendants, Lehman Meyer and Abraham Ehrmann, offered the following evidence in support of their answers, viz:

1st. Pleadings, verdict, and judgment in H. Weiller *v.* Dreyfus, on the law side of the court.

2d. 3 notes of Ermann, 5 warehouse receipts of H. Weiller, checks produced by L. Meyer 3 notes of L. Meyer, with endorsements thereon.

3d. Answers of Meyer, Weill & Levy, garnishees, in H. Weiller & Co. *v.* Dreyfus, 10371.

4th. Deposition of A. Ermann & cross-ex'n by Mr. Phillips.

5th. Deposition of Meyer Weill.

6th. Deposition of L. Meyer and checks showing loans to Dreyfus.

7th. Deposition of S. Gumbel.

8th. Deposition of F. Gumbel.

9th. Deposition of C. Gumbel.

10th. Deposition of U. Marinoni.

11th. Deposition of A. C. Hutchison.

12th. Cross-examination of W. Stern, marked W.

13th. Checks of, &c., Exhibits A, B, C, D, E, F, G, H, I, J.

And the cause was partially argued by counsel for the parties, respectively, and was continued for further hearing until Wednesday, 2d proximo, at 11 a. m.

69 *Testimony of E. T. Florence. Offered by Complainants and Filed 30 Nov'r, 1885.*

U. S. Circuit Court, E. Dist. of La.

H. WEILLER & Co. *vs.* JOS. DREYFUS *et al.* } No. 10521.

Testimony taken before A. G. Brice, examiner, on March 19th, 1885.

Present: Messrs. Labatt, for pl'ffs, & Messrs. Singleton, Brown & Choate, for def'ts.

E. T. FLORENCE, being duly sworn on behalf of pl'ffs, testifies as follows:

Direct examination by Mr. LABATT:

I am an att'y-at-law. I initiated the proceedings in the *proceedings in the* United States circuit court against Joseph Dreyfus. I went to the store of Dreyfus at 12½ a. m. on Sunday morning, October 28th, 1883. When I reached the store there was one,
70 perhaps there were two, large wagons or floats in front of the door of the store. There were some barrels on the float and on the banquette near the door, and a large number in the store, near the store, near the door, where they could easily be rolled out; the store was lighted, and the son of Dreyfus, Alphonse, was in the store. There were other persons present. Mr. Anderson and Mr. Wm. Stern and the drivers of the floats. So far as the barrels on the floats and on the banquette or in the store are evidence of preparation, I saw preparations for moving the contents of the store, and Mr. Joseph Dreyfus stated that he was removing the goods from the store; that they were his goods, and that he could do what he

pleased with them, and that you can't interfere with him. Mr. Dreyfus was rather excited. He ordered everybody out of the store.

Cross-examination by Mr. BROWNE:

This conversation took place somewhere about 2 a. m. It is rather difficult to fix the hour, as it was very early in the morning, and I may be mistaken as to the time by an hour or so, but it was after one a. m. Sunday morning. It is impossible to say to the minute. The conversation did not take place immediately after I arrived, as Mr. Dreyfus was not there when I arrived, as I saw him alight from a cab before that conversation took place. I do not remember whether the conversation took place in the store or on the banquette. The
71 words took place too rapidly for me to remember these details, and my thoughts were absorbed in planning how to prevent further removal of the goods. There were present when this conversation occurred between Dreyfus and myself, I think, Mr. Anderson, Mr. Haas, perhaps, and also Wm. Stern; but whether in earshot or not I can't say. It was before 4 a. m. that this conversation occurred. It was before Mr. Stern went for the marshal, because it was on my telling Mr. Stern that I could not stop or hold the goods after 6 a. m. and that Mr. Dreyfus' threat could be carried into effect, that I sent him for the marshal.

Objection.—Mr. Browne objects to the statement of the witness as not responsive to any question put to him; that it is not shown that Dreyfus nor any of the defendants were present when that conversation took place between witness and Stern.

A. The witness adds that this statement was made in reply to a request on the part of Mr. Browne to approximate the hour when Mr. Dreyfus made the remarks testified to more clearly than previously stated. I saw Mr. Dreyfus arrive after the drays or floats. I do not know when the floats arrived; they were there when I arrived.

Redirect examination by Mr. LABATT:

I was at my house when I was informed that the removal was taking place; it was about half past 12 on Saturday night.

Q. When did you learn the fact of the intended removal of those goods?

72 Objection.—Mr. Browne objects to the question because it elicits hearsay evidence only and is commencing a new main examination.

A. In the neighborhood of eleven o'clock on Saturday night. I know Mr. Lehman Meyer now, but did not know him at the time of the attachment, and cannot say that he was there at the time and do not recollect having seen him there. I could not identify him as being present.

73 *Testimony Taken on Behalf of the Complainants before A. G. Brice, Special Examiner, this 21st March, 1885.*

Present: D. C. & L. L. Labatt, Esqrs., solicitors for complainants; R. H. Browne, Esqr., solicitor for defendants.

WILLIAM STERN, a witness produced and sworn for the complainants, says:

By Mr. LABATT:

Q. What is your business?
A. I am a broker.
Q. How long have you resided in New Orleans?
A. About ten or eleven years.
Q. Are you acquainted with the parties to this litigation—H. Weiller & Co., Joseph Dreyfus, A. Ermann, M. Weil, and L. Myer?
A. I know Weiller, and I know Dreyfus personally.
Q. You know Ermann and Lehman Meyer?
A. Yes, sir.
Q. Will you state what connection you had in October, 1883, with Joseph Dreyfus, of this city?
A. I was selling him goods; I did previous to October.
Q. Was he indebted to the houses you represented in October, 1883?
A. Yes, sir.
Q. What occurred between you or the houses you represented and Joseph Dreyfus prior to his failure, in October, 1883—just
74 a few days prior?
A. Well, we were suspecting him of doing some unlawful acts.

Mr. Browne objects to the question and answer.

WITNESS: I give you my answer. We suspected him of doing some unlawful acts.

Mr. Browne objects to the answer as not responsive to the question.

Q. What occurred in consequence of that suspicion?

Mr. Browne objects to the question as illegal and improper.

A. I notified my house by telegraph and, amongst others, Weiller & Co., of Philadelphia. I said nothing but positive facts.
Q. What did you communicate to them?
A. I knew that Joseph Dreyfus had bought when he was in Philadelphia from Weiller & Co., or from Weiller & Ellis, as it was at that time, a large bill of whiskies. This is of my own knowledge, and I have seen the goods in the store, and knew that they were not paid for, and I telegraphed to Weiller & Ellis, in Philadelphia, to take care of their account, and they telegraphed to Mr. Labatt and to myself at the same time to save their account; and Mr. Labatt

called at my office, and we passed by the store of Joseph Dreyfus together. We saw him ship a float-load of goods two days previous to when I caught him removing his goods in the night-time. These are positive facts. Mr. Labatt was with me.

Q. Did you not have an interview with Mr. Labatt prior to
75 the Saturday or on that Saturday in which it was determined to make the attachment at once?

Mr. Brown objects to the question as leading.

A. I did.

Q. What was the reason the attachment was not made on Saturday?

Mr. Brown objects as above.

A. Because Mr. Labatt told me there was no legal ground to attach.

Q. That is at that time?

A. Yes, sir; at that time.

Q. Was not Mr. Labatt consulted, because of the absence of your attorney, by you and Mr. Anderson?

A. He was.

Q. And was or was not it agreed upon at the time that we would await further developments before attaching?

Mr. Brown objects as above.

A. It was.

Q. Then tell me what occurred in your presence on Saturday night, about twelve o'clock or after 12 o'clock, in relation to Dreyfus removing his goods? What was done from the time 12 o'clock came, in your presence and to your knowledge. You were on the street, were you not, about 12 o'clock?

A. Yes, sir.

Q. What occurred at Dreyfus' store in your sight?

A. Well, about half past 12 we saw floats driven up and the doors of the store thrown open and the goods were rolled out, and one float was loaded and was driven off towards Canal street, and
76 another float was pulled up when that one had started off, and they were on the point of loading that when myself and Mr. Anderson and Mr. Hass walked up and stepped into the store and objected to any further removal of the goods.

Q. Whom did you speak to?

A. Mr. Dreyfus.

Q. Was he engaged in removing them?

A. He was seemingly directing the whole affair. He was in the center or middle of the store.

Q. What did Mr. Dreyfus say or do?

A. He answered us that we had no right to interfere; that it was his goods he was removing.

Q. Did he continue their removal or not?

A. No, sir; in the meantime the police came up, the city police, and they stopped him from removing his goods in the night-time as against the police ordinance.

Q. Did you see any goods in the morning when you went to the store?

A. I got back to that neighborhood about nine o'clock in the morning, just as they were finishing up removing the goods, when an attachment got there from the United States court.

Q. Was that attachment made by Mr. Florance or not?

A. Yes, sir; it was.

Q. Do you know anything of any of the creditors having offered during the week prior to this explosion to Mr. Dreyfus to sell his paper at a discount?

77 Mr. Browne objects as leading.

A. I do.

Q. What do you know of that?

A. I know Mr. Haas, from the firm of Krebs & Spiess, offered him his paper, amounting to $4,000 and odd, whatever the amount is which is in the record, at 75 cents on the dollar.

Q. Did he obtain it or not?

A. He did not; he would not buy it.

Q. Did anybody else offer his paper?

Mr. Browne objects as above.

A. I do not —.

Q. Did you see anybody else present that night in or about the store of these persons who are defendants in this case?

A. Who are the defendants?

Q. Lehman Meyer is one.

A. I did see him.

Q. About what time?

A. About half past 12, coming out of the store with a lamp and walking down towards Canal street in the direction of custom-house. In other words, in the direction of Meyer Weill's store.

Q. Were you present at the meeting of the creditors of Joseph Dreyfus at the St. Charles Hotel, when Dreyfus was present?

A. Yes, sir.

Q. What did Dreyfus say on that occasion in relation to his being solvent when he bought the goods?

78 A. He said that he knew he was insolvent for some time.

Mr. Browne objects to the statements of the answer as not being made in the presence of A. Ermann or Meyer Weill or any of the other defendants.

Q. Do you know what he proposed to pay his creditors on that occasion?

A. Yes, sir.

Q. What was it?

A. He wanted to pay 40 cents on the dollar, unsecured, in four installments of 6, 12, 18, and 24 months.

Q. Was it accepted by the creditors?

A. It was not.

Q. Is it a usual thing or not for a merchant in good standing in

New Orleans to deliver goods at night, as these were delivered, to any purchaser?

Mr. Browne objects as above.

A. I have never experienced it in the ten years while I have been doing business in New Orleans, and I have seen some very busy times here.

Q. What was the effect of the news in the city? How soon was it known?

Mr. Browne objects to the question. The witness can testify to facts, but not as to results. He can state facts, but not impressions.

Q. What was the effect produced by this news on Sunday morning all over the city?

79 A. It was general excitement in the business community.

Q. Talked of amongst the various people you met?

Mr. Browne objects as above.

A. Yes, sir; it was.

Q. Were there any creditors other than you creditors in or about the store on Sunday?

Mr. Browne objects as leading.

A. In or about which store?

Q. Dreyfus' store.

A. On Sunday?

Q. Yes.

A. I did not see anybody in or about his store on Sunday, because I did not get back to the store until late in the evening.

Q. Did you see the evening papers of that day?

A. I did.

Q. Was an account published of it in the evening papers and on Sunday morning?

Mr. Browne objects to the examination as leading.

A. There was no account published in the morning paper, but in the evening papers I read an account of it.

Q. That was Sunday?

A. That was a Sunday-evening paper.

Cross-examined by Mr. BROWNE:

Q. What was the standing of Joseph Dreyfus in this com-

80 munity up to within a few days before his failure?

A. A few days before his failure his standing was nowhere; he had no more standing.

Q. When did his standing cease?

A. Three weeks before his failure his credit was lost.

Q. When you say his credit was lost what are the facts that you give as a proof of it?

A. His paper was offered on the streets at less than it called for.

Q Are not many merchants' paper offered on the streets for less that it calls for?

A. Not good merchants.

Q. What had been his standing for years previous as a merchant here?

A. It was tolerably fair; his standing.

Q. Have you not stated on another examination that his standing was good?

A. Yes, sir.

Q. Why do you not state so now?

A. Because I cannot testify in exact words from one year to another.

Q. Did you not testify a few days ago that his standing was good?

A. Well, that is what I am saying now.

Q. Was not he regarded up to within a short time of his failure a perfectly solvent man, in high standing and good credit?

81 A. You limit me too close to say within a few days. A month before his failure I will admit, but not within a few days of his failure.

Q. Have you not made yourself busy around by making it understood that he was in a failing condition for two or three weeks before he got into trouble?

A. I have not. In regard to that question I would state that I also knew within two weeks of his failure that he was going to fail. Nobody knew anything of it except Mr. Haas, Mr. Anderson, Mr. Labatt, myself, and a gentleman from New York, a friend of mine.

Q. Was it the fact that he had bought this large amount of goods that first started your suspicions?

A. The first decided conviction I had that Joseph Dreyfus was going to fail was when my friend, Mr. E. L. Spellman, from New York, went into his store and offered him goods much above the market price and he bought from him the quantity he was offered. That is what started my first suspicion.

Q. Were you present with Spellman when he was there?

A. I was not present.

Q. So that what you have is hearsay?

A. This is hearsay. I simply state this fact because you asked me how my suspicion was started.

Q. This is the first fact, you say. Now, what was the next fact?

A. It did not need any next fact any more. That was enough for me.

82 Q. And that was the ground, then, of your suspicion?

A. That was the ground of my suspicion.

Q. Didn't you state in your testimony in the United States circuit court in the case of H. Weiller & Co. *vs.* Joseph Dreyfus, A. Ermann, intervenor, that your suspicion was first aroused by the fact that Joseph Dreyfus had pledged the warehouse receipts of whiskey with the Metropolitan Bank?

A. He did.

Q. I ask you if you did not testify that that was the matter which first aroused your suspicion.

A. I obtained that information.

Q. Answer yes or no.

A. Yes, sir; I did state that in my testimony. That was four weeks before Mr. Spellman came here, or, in other words, two weeks, or it was some time before Mr. Spellman arrived here, that I inquired of Mr. M. Frank, the then president of the Metropolitan Bank, if he knew anything about the standing of Joseph Dreyfus, and telling him that I learned he had his warehouse receipts in pledge; and when Mr. Spellman did arrive here I consulted with him, and he by his offering Joseph Dreyfus above the market value led me to the positive conviction that Joseph Dreyfus was not in good standing any more, offering Joseph Dreyfus goods above the market value, and Joseph Dreyfus buying them.

Q. How do you know he bought them?

83 A. Because I took Mr. Spellman's word for it, and Mr. Spellman sent the order to his house in New York, and then stopped the shipment of the goods by telegraph.

Q. All of which you know by hearsay?

A. Well, it all transpired in my office, No. 17 Tchoupitoulas street.

Q. The buying took place in your office?

A. No, sir; the sending of the order and the countermanding it by telegraph.

By Mr. LABATT:

Q. Do you know Mr. Ermann?

A. Yes, sir.

Mr. Browne objects to reopening up the direct examination again. They have concluded the main examination, the witness has been cross-examined, and Mr. Ermann's name was not mentioned in the original examination.

Q. Did you see Mr. Ermann in or about the neighborhood of the store of Dreyfus on or about the night of Saturday, the 28th Oct., 1883?

Mr. Browne objects as leading.

A. Which night do you mean—Saturday to Sunday or Sunday to Monday?

Q. From Sunday night to Monday.

A. I did.

By Mr. BROWNE:

Q. You have testified in the case of Dubois against Joseph

84 Dreyfus where you saw him and with whom you saw him. I now read that testimony to you and ask you if it is true.

A. I swore to that testimony.

"Q. With which one of the Gumbels was Ermann talking to, walking up and down, on Sunday night when you saw him?

"A. With several of them. They changed off one with the other. I used to see at one time two together; then the next time I would see one of these two walking with another of these gentlemen.

"Q. So you say there were four Gumbels besides Ermann?
"A. Yes, sir; I think so.
"Q. I want you to be positive about that; it is an important matter.
"A. I am positive that Mr. Ermann was there and Mr. Cornell Gumbel was there; I am positive that Mr. Gumbel, the cotton merchant, was there; I am positive the former notion merchant was there; and Ermann was there with these three, making four of them altogether. These three Gumbels and Ermann was four, and these were the men I am positive I saw there." Is that correct?
A. Yes, sir; I suppose so.
Q. That is the interview that you have reference to when Mr. Labatt asked you whether you saw Mr. Ermann there on Sunday night?
A. Yes, sir.
Q. And that was at the corner of Tchoupitoulas and Gra-
85 vier street, as related in your testimony—between Tchoupitoulas and Magazine?
A. Yes, sir.
Q. And the hour, I think you said, was between what?
A. Between 12 and 1 o'clock.

D. C. LABATT, a witness sworn for the complainants, says:

As the attorney of H. Weiller & Co., the complainants, I was informed by telegraph from Philadelphia that a claim of theirs was in danger and to prepare for an attachment of Joseph Dreyfus and to refer to Mr. Stern for further information. I have lost that telegram.

Mr. Browne objects to the statement of the contents of the telegram. It must be produced.

WITNESS: I say it is lost; and to consult Mr. Stern, who would give security. I met Mr. Stern. I found him and others excited in relation to Dreyfus, and after consultation and seeing the goods removed out of the store on drays it aroused my suspicion.

Mr. Browne objects to the testimony because no such allegation has been made nor any such pretense has ever been urged in this case since the beginning—that Dreyfus was running his goods out before that night—not until this day.

WITNESS: I recommended an immediate attachment that day,
Saturday, and Stern and Anderson objected; that the time
86 was not ripe.

Mr. Browne objects to anything of anybody else's statement and to conversations between the witness and others out of the presence or out of the knowledge of the parties defendant in this case.

WITNESS: And we awaited events. On Sunday morning I learned of the removal of the goods during the night, and on Monday morning I made an attachment for Weiller & Co., in the United States court, in suit No. 10379, and soon after a sequestration of the unsold goods of Weiller & Co., which I identified as having been

removed during that night from Dreyfus' store to Meyer Weill's warehouse, as seen by suit No. 10371, both of which records I offer in evidence—the attachment, with the marshal's return, the note of Dreyfus, the interest computation, and the account filed with these records. The account is marked "Weiller."

Mr. Browne objects to the introduction of the open account.

Cross-examined by Mr. BROWNE:

Q. Did you go around and watch the goods going out of the store yourself?

A. I am not a watchman, but I happened, as attorney, to go into the neighborhood for the purpose of seeing what the appearance of things was, and I found the appearance very suspicious. I found everything looking in disorder as if preparing for
87 a burst up.

Mr. Browne objects to the impressions of the witness. Witness is aware of the duty of a witness to answer.

Q. What day was it that you were there and saw the goods removed?

A. It was on Saturday, about one o'clock in the day, that I saw a large quantity of goods, wines, being put upon a float—a very full, large load—and I went back and said, "This man is removing his goods; let us attach." That is what occurred.

Q. How many drays were there?

A. There seemed to be one, two, or three strung along. I did not notice whether they were his drays or not; but one was in front loading expeditiously.

Q. Is it an uncommon thing for a wholesale grocer so to load one dray in front of his store rapidly to get the goods out of it?

A. Not at all, where he is an honest man; of course not; but when he is dishonest it makes a great deal of difference.

Testimony Offered by Complainants and Filed 30 *Nov'r*, 1885.

Depositions for complainants.

S. Mendelsohn 1
George H. Theard 17
Joseph Morris 23
Joseph A. Dare 24
W. O. Hart 28

88 H. WEILLER & Co. *et als.* } No. 10521.
vs.
JOSEPH DREYFUS *et als.* }

Testimony on behalf of complainants resumed this 26th day of March, 1885, at 3 o'lock p. m., before A. G. Brice, special examiner.

Present: D. C. & L. L. Labatt, Esqrs., solicitors for complainants; R. H. Browne, Esq., solicitor for defendants.

S. MENDELSOHN, a witness produced, sworn, and examined on behalf of complainants, says:

By Mr. LABATT:

Q. Where do you reside?
A. In New Orleans.
Q. Where were you residing in October, 1883?
A. In the same place.
Q. Do you know the parties to this suit—H. Weiller & Co. against Dreyfus, Ehrmann, Weill, Meyer, and D. Levi?
A. Yes, sir.
Q. Do you know them all?
A. Yes, sir; I know them all.
Q. Did you have or not any claim of any creditor of Joseph Dreyfus in 1883 for collection?
A. Yes, sir; I sold Dreyfus goods for a house I represented—Elias Block & Sons, of Cincinnati, creditors of Joseph Dreyfus.
Q. For goods that you sold him?
89 A. Yes, sir.
Q. Were you acquainted with his commercial standing just prior to his failure, in October, 1883?
A. Yes, sir.
Q. What was his commercial standing in New Orleans and elsewhere for a month prior to his failure, in October, 1883?
A. Well, about six weeks prior to his failure it changed very much against him. He had bought all the goods and the shipments were not made; and there were some goods that he had bought and they were called back. On the 22nd day of September, 1883, which was about six weeks after I made the sale to him, I wrote to my house and stated the facts, telling them that I feared Mr. Dreyfus would go overboard before the bills became due. They wrote me then the fact that I might approach him. From that time I watched him very close every day, and had some reason to believe that my papers would not be paid. I could sell him goods a few days before I wrote to the house, but I would not sell him.
Q. His credit, then, was impaired during the month of October, 1883, prior to his failure?
A. Yes, sir; for four, five, or six weeks prior.
Q. Did you have any occasion, or the house you represented through you, to offer him the paper for discount in advance?
A. No, sir; I did not do that.
Q. Do you know anything else showing the impairment of his credit in the community here, besides what you have stated?
90 A. Well, it has been street talk that he was losing very heavily speculating. He was engaged in two or three speculations where he was short, and I suppose that was what first gave the indication of his failing.
Q. Were you present at any time in his store on the Sunday morning after he had gone in during the night-time?

A. Yes, sir; I was in that Sunday morning and I was in there Saturday.

Q. Before the Sunday morning?

A. I was in there Saturday about eleven or twelve o'clock.

Q. What took place in your presence at that time?

A. Well, I did not see anything particular, except that there were goods loaded very rapidly without being marked. The goods went off in a roundabout way, in a different direction from his store, and were taken to the depot and shipped without marks. That caused me to send a telegram on to Cincinnati.

Q. What was the effect of the telegram? Do you remember it? What was its language?

A. They telegraphed me to employ an attorney and the papers would come forward.

Mr. Browne, for defendants, calls for the telegram referred to by the witness.

Q. Have you got that telegram about you?

A. I may find it. I have not got it with me now. I had a letter with me which was better than the telegram. I took it from my file of papers of 1883, but I have not got it here.

91 Q. Will you have any objection to producing the telegram and letter, to be read in this case?

A. I cannot produce the letter I sent, but I can produce a copy and the answer to it.

Q. It is the answer to your letter that we want. Will you let us have it or a copy of it?

A. I expect I will give it to you. I am not interested in this suit, and I will give you that letter, which I have among my correspondence, or a copy of it.

Mr. Browne, for defendants, calls for the original, the witness stating it is in his possession.

Cross-examined by Mr. BROWNE:

Q. You speak of his having speculations wherein he was short. What personal knowledge have you of anything of that sort? Is it not hearsay only?

A. Well, of course, but generally outsiders are present when a man makes purchases. It is from general knowledge or hearsay. But to my positive knowledge he was engaged in one speculation.

Q. How much goods did you see shipped on Saturday without marks?

A. Well, I seen one float-load, about twenty barrels.

Q. Do you know what was in the barrels?

A. Yes, sir.

Q. Did you examine them?

92 A. I did not open the barrels.

Q. How do you know what was in them?

A. I know what was in them.

Q. How do you know?

A. I know the article of commerce. I know by the circles the float made, with another man on top of the float.

Q. And with all that knowledge you made no attempt to attach?

A. No, sir; I did not, because my paper was not due until Sunday, the 28th of October.

Q. When you see a man moving away his goods that way you think you cannot attach?

A. Well, if one of the firm had been there I would have attached, or if I had the power of attorney in New Orleans I would have attached. I would have taken all the consequences right then and there; but not being sufficiently fortified, I did not want any trouble.

Q. You say you sent a telegram to Elias Block & Sons?

A. Yes, sir.

Q. I call upon you to produce that telegram.

A. If I have got it I will give it.

Q. Do you not keep letter-press copies of your telegrams as well as letters?

A. No, sir. I very often go — the telegraph office from the street and telegraph. If I telegraph from my office and ring for a messenger, then I copy them.

Q. Which did you do that day?

93 A. I don't recollect that, whether I telegraphed from the office or not. I am not prepared for this, or I would have looked. All my books and papers from 1883 are filed away.

Q. Did Block & Son make any attachment at all?

A. Yes, sir.

Q. When?

A. On Sunday or Monday morning early.

Q. So you did think you had the power on Sunday morning to attach?

A. Yes, sir; I did have the power, because one of the firm arrived here.

Q. You think, then, that you did have the power when one of the firm was present?

A. Yes, sir; I did. One of the firm was here in the city.

Q. Did not Dreyfus pay up all of his paper as it fell due up to Saturday?

A. I think he did or else he would have went to protest sooner.

Q. He had not sought or asked any extension, had he?

A. Not to my knowledge. I do know that he was offered paper on Friday and Saturday at heavy discount.

Q. Were you present when that was done?

A. I was not present, but I got it from the man that offered it. I was offered it myself.

Q. I am asking you what you know yourself.

A. Well, I was asked too, and I told the party that I would do likewise. I had some of his paper too.

Q. When was that paper dated?

A. I don't know the exact date. I believe it became due

94 on the 28th.

Q. I ask you when it was dated, not when it became due.

A. Well, I cannot tell you exactly now. Yes, sir; I can now answer. June 26th at four months and August 23d at five months.

Q. Is that the paper sued on in the case of Elias Block & Son in the United States court?

A. No, sir; I think the suit was an attachment on that paper.

Q. Is that the note that is sued on in the United States court in the case of Elias Block & Son against Dreyfus?

A. We held two pieces of paper, and I don't know whether the attachment was made on the notes or for so much money. I know the attachment was taken out without showing the note to the attorney, because the note was in the hands of the Canal Bank, and it was protested on Monday. The suit was made for so much money due Elias Block & Son, and the description of the claim was two notes. At the time of the attachment I did not have possession of that note.

Q. Had the Canal Bank possession of the note?

A. Yes, sir; the Canal Bank had it for collection. The paper was under protest on Monday.

Q. When did you get any reply from Elias Block & Sons to your telegram that you sent Saturday?

A. I think it was Sunday morning; Saturday night or Sunday morning.

Q. What attorney took out that attachment?

A. Thomas Hunton.

Q. What evidence had you that Dreyfus was going to fail?

95 A. The first evidence was that he was receiving wines and brandies from the California house which had an agent here who was benefited by the purchases of Joseph Dreyfus from him, and yet that agent and Dreyfus were on bad terms. That was one house. A few days afterwards a shipment arrived from another house, which also had an agent here who was an bad terms with Dreyfus, and there were no dealings between them whatever; and yet he bought these goods. He was receiving more wines and brandies than he required for his trade, in my opinion.

GEORGE H. THEARD, a witness produced, sworn, and examined on behalf of complainants, says:

By Mr. LABATT:

Q. You are an attorney-at-law of this city?

A. Yes, sir; I am.

Q. You were representing certain creditors of Joseph Dreyfus?

A. I have represented John Osborne, Son & Co., of New York.

Q. Were you one of those that took out proceedings in the United States courts against Joseph Dreyfus some time in October, 1883?

A. I sued out a sequestration in the name of these gentlemen on the 30th of October, I think. It was the Tuesday following the Sunday on which this transaction occurred.

Q. Did you find any of the goods of John Osborne, Son &

96 Co. which were identified by you as being sold?

A. I found a portion of the goods. I believe I found all the goods at the house of Meyer, Weill & Co., on Decatur street.

Q. Did you go there in person and see them?

A. I went there with the gentleman who had formerly represented the house of John Osborne & Co., Mr. Prior, accompanied by a deputy marshal. We met Mr. Weill at the entrance of his store, and I told him the object of my visit, and he said, "If you have any goods here, you can go and take them." Then we walked back, and he followed us back in the store. I asked him who had brought the goods there, and he told me he did not know anything about it, but that he had loaned the key of the store to Lehman Meyer; but he did not know who had brought the goods there.

Q. Did he say anything about who owned or claimed the goods?

Mr. Browne, for the defendants, objects to the question as leading.

A. I believe I asked him myself whether anybody claimed these goods.

Q. What was his answer?

A. He replied to me—or whether it was an assertion that was vouchsafed by him I cannot say—but he said he did now know to whom these goods belonged.

Q. That was on Tuesday, the 30th October, 1883?

A. Yes, sir; that was Tuesday, October 30, 1883.

Q. What time was that?

97 A. It was about between ten and eleven o'clock in the morning.

Q. Were you present when the case of H. Weiller & Co. against Joseph Dreyfus and the intervention of Ehrmann was tried?

A. I was not.

Cross-examined by Mr. Browne:

Q. Are you positive of the language of Meyer Weill, as to his stating to whom these goods belonged to?

A. I am very positive. If these are not his identical words, because he speaks English very indistinctly—he speaks German-English—but he stated positively that he did not know to whom these goods belonged; that if they were mine I could have them. I must say that I was quite surprised afterwards.

Q. If you had given out receipts for goods in your warehouse would you not think it extraordinary that you should not know that somebody claimed them?

A. Well, I don't know; that has nothing to do with this.

Q. If you had given out receipts for goods in your warehouse would you not think it extraordinary that you should not know that somebody claimed them?

A. I did not ask him whose goods they were. I stated I was not positive whether I had made the inquiry or whether the information was vouchsafed by Mr. Weill, but the fact is positive that he stated to me that he did not know to whom these goods belonged, and if they were mine I could have them. That fact made a deep impression on my mind.

Q. You say that Weill does not speak very good English?
98 A. He does not speak very good grammatical English. He would not be taken as an English-speaking citizen, but he speaks it sufficiently well to be understood.

Joseph Morris was here called as a witness, he being the night watchman for Dubois, a complainant against Joseph Dreyfus, and watchman for Meyer Weill, and the solicitors, considering that his testimony has already been taken and filed in the case of Dubois against Joseph Dreyfus, No. —, United States circuit court, do now agree that the testimony of this witness so taken shall be considered as reiterated and sworn to in this case, and that it may be read and used as evidence on the trial of this case as if specifically taken and filed therein.

JOSEPH A. DARE, a witness produced, sworn, and examined for complainants, says.

By Mr. LABATT:

Q. Where do you live?
A. At 274 Thalia street, New Orleans.
Q. How old are you?
A. Twenty-three years.
Q. Do you know Mr. Joseph Dreyfus?
A. I do not know that I do know him. I do not think I know him.
Q. Are you a capitalist, or what is your business?
99 A. A clerk.
Q. Have you any capital to invest in mortgages?
A. No, sir.
Q. Did you or not on the 27th October, 1883, take mortgages by loaning $9,000 by one act and $6,000 by another act to Joseph Dreyfus on his home on Josephine street?
A. Well, I don't know. I have been in the habit of signing papers in that manner for Mr. W. O. Hart, notary public, but I don't know this case particularly. I may have signed these papers and I may not.
Q. The act purports to be a loan evidenced by notes. Did you ever take any notes from Mr. Hart's office to the extent of $6,000 and $9,000? Did you ever have them in your possession?
A. No, sir; I never did.
Q. Did you ever negotiate these notes to anybody afterwards?
A. No, sir.
Q. No money has ever passed between you and Mr. Hart, the notary, to Mr. Dreyfus in relation to these mortgages?
A. No, sir; none that I know of.

Mr. Labatt offers on behalf of complainants the two acts of mortgage referred to, marked, respectively, "B" and "C."

Cross-examined by Mr. BROWNE:

Q. Were you ever a clerk in the office where Mr. Hart is?

A. No, sir.

Q. Where do you clerk?

100 A. In the New Orleans City and Lake Railroad Company's office.

Q. I understood you to say you had often signed acts drawn up by Mr. Hart.

A. I was in the habit of signing papers for him.

Q. Is it not a frequent occurrence that people make mortgages and you appear as the acceptor of them for form's sake where no money is given?

A. Well, I cannot say whether I signed any more mortgages besides that. I don't know of any.

W. O. HART, a witness produced, sworn, and examined for the complainants, says:

By Mr. LABATT:

Q. You are a notary public, of New Orleans?

A. Yes, sir.

Q. Where is your office?

A. No. 81 St. Charles street.

Q. Who else occupies the office?

A. Braughn, Buck & Dinkelspiel.

Q. Was Mr. Joseph Dreyfus in that office on the 27th October, 1883, for the purpose of passing any act?

A. No, sir.

Q. Was Mr. Dare there?

A. Yes, sir; I think and believe Mr. Dare was there.

101 Q. Did you, as a notary public, pass two acts on that date, one for $6,000 and the other for $9,000?

A. I know there were two acts of mortgage passed.

Q. When did Mr. Dreyfus sign either or both?

A. In the afternoon of the 27th October.

Q. In your office?

A. No, sir.

Q. Where?

A. Somewhere on Union street. I don't remember the number now, but I think it was No. 42 Union street.

Q. You went there?

A. Yes, sir.

Q. How came you to go there?

A. A memorandum was left on my desk while I was absent, as I remember, to prepare two acts of mortgage, and telling me how to prepare them, and to bring them there to be signed.

Q. Do you know who that memorandum was signed by?

A. I do not know. I only know it was lying on the back of a copy of the title. It was likely written by Mr. Meyer.

Q. Did any money pass before you between the parties to the act?

A. No, sir; not with that act. Mr. Dare was the nominal mortgagee. He happened to be in the office, and I asked him to sign it.

I know I told him I would put his name in, as he was at that time in the office for the moment, and when I came back I had him sign it.

102 Q. Who signed the notes?

A. Joseph Dreyfus.

Q. And you prepared them?

A. Yes, sir.

Q. Did you see them afterwards?

A. I saw them in the possession of the sheriff.

Q. You had no further connection with the transaction than that?

A. No, sir; none in the world.

Q. What time on Saturday were they signed?

A. I think about two o'clock. I would not be quite positive of that either. I know it was before three o'clock, because after they were signed I came back to the office, and then went to the bank. Just about three o'clock I go to the bank to see if any notes are to be protested.

Q. Did you take them to the mortgage office immediately on that same day?

A. Yes, sir; on that same day, after I came back from the bank. I got to the mortgage office before it closed—about ten minutes before four o'clock. The mortgage office closes at four o'clock.

Q. Were you told to have them recorded by anybody?

A. I was told to have them recorded at once.

Q. Who told you that?

A. I don't know, but I think it was Dreyfus. I was told to have that done at the time the acts were signed.

Q. And you think it was Dreyfus told you?

A. Yes, sir.

103 Q. Was there anybody else present at the time they were signed?

A. Yes, sir; they [there] were.

Q. But not connected with the transaction?

A. Not to the best of my knowledge—no, sir.

Cross-examined by Mr. BROWNE:

Q. Is it not a common thing for a party to interpose in notarial acts where mortgages are created?

A. Yes, sir; it is almost always done, in my experience.

Q. It is some clerk in the office that is named in the mortgage as the party to whom the mortgage is made?

A. Yes, sir.

Q. It would never create suspicion in anybody's mind in this city who knew anything about the business for such a thing to be done?

A. I don't think so.

Q. Are you at all positive as to who left the memorandum on your desk?

A. No, sir; I have no recollection of it at all.

104 *Petition. Filed Oct.* 31, 1883.

U. S. Circuit Court.

S. JACOBY & Co.
vs.
JOSEPH DREYFUS. } No. 10380.

To the honorable the judges of the circuit of the United States in and for 5th circuit and eastern district of Louisiana:

The petition of S. Jacoby & Co., a commercial firm composed of Sigmund and Gustave Jacoby, all residents of the city of New York, State of New York, and therein domiciled and carrying on business, with respect shows—

That Joseph Dreyfus, a citizen of New Orleans and State of Louisiana, is justly and truly indebted unto pet'r in the full sum of twenty-nine hundred and eighty-two $\frac{60}{100}$ dollars, with 5% interest from judicial demand till paid, for this, to wit:

That pet'r is holder and owner of two promissory notes, one dated New Orleans, Sept. 1st, 1883, for $2,741.60, payable at 4 months after date, and another at 4 months from Oct. 10th, 1883, for $165, duly signed by def't, & for goods, wares, and mdze. sold and delivered at the special instance and request of defendant in the sum of $76, aggregating $2,982.60, all which will more fully appear by
105 said notes, open accounts, hereto annexed and made part of this petition for greater certainty.

Now, your pet'r alleges that said defendant has failed and is under seizures, and that he has committed acts of fraud by removing fraudulently and at dead of night a large portion of his goods for the purpose and with the intent to conceal, part with, and dispose thereof, to the injury of his creditors, and to convert same into money with the intent to defraud pet'rs, but that he has in his possession and on hand some of pet'r's goods so sold susceptible of identification and in the original packages, either stored at def't, at 33 Tchoupitoulas St., or at 34 North Decatur St., kept by one Meyer Weil and David Levy, and that said Dreyfus is about to conceal, part with, and dispose of same during the pendency of this suit in order to deprive pet'r of his lien and privilege accorded to him by the laws of Louisiana under the vendor's right, and pet'r fears and has good cause to fear that def't will part with and dispose of said merchandize fraudulently during the pendency of this suit; pet'r also alleges that he has a lien and privilege on said goods, wares,
106 and merchandize susceptible of identification in the original packages, and he wishes to exercise his right thereto by sequestering same, subject thereto according to law, and having the same sold and the proceeds paid to him over and above and in preference to all other creditors.

Wherefore, the premises, affidavit, and bond heretofore filed being considered, pl'ff prays for a writ of sequestration to issue; that said Joseph Dreyfus be duly cited to appear and answer; that after due

proceedings said writ be maintained with lien and privilege according to law, and for judgment against def't in the sum of twenty-nine hundred and eighty-two $\frac{82}{100}$ dollars, with 5% interest from judicial demand till paid, and for costs, and that the marshal be ordered to sell the goods sequestered and pay the proceeds over to pl'ff by preference over all other creditors, and for all general and equitable relief.

D. C. & L. L. LABATT.

Waiver of Jury.

It is agreed that the jury be waived in the above cause.

D. C. & L. L. LABATT, *Att'y.*
A. H. LEONARD, *Att'y Def't.*

107 *Affidavit for Sequestration. Filed October* 31, 1883.

S. JACOBSBY & Co.
vs.
JOSEPH DREYFUS. } No. 10380.

Personally appeared Sol. Rosener, who, being duly sworn, says he is the agent of the petitioners, and that all the facts and allegations of the foregoing petition are true and correct to the best of his knowledge and belief, and that he fears that the def't will conceal, part with, and dispose of his property during the pendency of the suit and send them out of the jurisdiction of the court, and that his principals are all of the jurisdiction of *the* this court and the State of La.

SOL. ROSENER.

Subscribed and sworn before me Oct. 31, 1883.

F. H. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Order.

Let a writ of sequestration issue according to law and as prayed for by the plaintiff- on giving bond and security according to law in the sum of one thousand dollars.

Oct. 31, 1883.

DON A. PARDEE, *Judge.*

108 *Writ of Sequestration. Issued Oct. 31st, 1883.*

UNITED STATES OF AMERICA:

Circuit of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

S. JACOBY & Co.
vs.
JOSEPH DREYFUS. } No. 10380.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to sequester and take into your possession according to law the goods and merchandize that may be identified by the plaintiffs in the store of the defendant, or that of Meyer Weil, or elsewhere, of the value of $2,982.62, and the same you will safely — until the further order of the court in the premises, and that you make due return of all your acts and doings herein according to law.

Witness the Honorable Morrison R. Waite, Chief Justice
[SEAL.] of the Supreme Court of the United States, the 31st day of October, 1883.

F. A. WOOLFLEY, *Clerk.*

109 *Marshal's Return.*

Received October 31, 1883, by the U. S. marshal, and on the same day, month, and year I did sequester and take into my possession 58,275 cigars, fifty-eight thousand two hundred and seventy-five cigars, pointed out to me under this writ by plaintiffs' agent. Of said cigars (5,125) fifty-one hundred and twenty-five were contained in the premises No. 33 Tchoupitoulas —, in the city of New Orleans, and was at that time under seizure and in my control by virtue of numerous writs of attachments issued out of this hon. court in the suit of Corning & Co. *vs.* Joseph Dreyfus and numbered 10354 of the docket and numerous other suits, to which reference is made, and in the premises No. 34 Decatur street I seized 53,150 cigars, fifty-three thousand one hundred and fifty cigars, all as described, and did notify of said seizure the defendant, Joseph Dreyfus, and Meyer Weill & Co., as will more fully appear by reference to the annexed notice of seizure and the return thereon. Subsequently all the cigars, 53,150, seized at No. 34 Decatur street were claimed by intervenor, A. Ermann, and the said intervenor, A. Ermann, did
obtain an order from this *the* court permitting him to bond
110 the said 53,150 cigars in such sum as may be the value thereof, to be ascertained from the report of appraisers herein duly appointed and qualified. On the 7th day of November, 1883, the said intervenor, Abraham Ermann, did bond the said 53,150 cigars by furnishing his bond, with Meyer Weill as surety, in the

sum stipulated; whereupon the said cigars were to him, the said intervenor, A. Ermann, released. A copy of the order to bond, the appraiser-' report, the bond, and the transfer thereof were duly returned into court on the 7th Nov'b'r, 1883, and reference is thereto made, and the remainder of the property sequestered aforesaid, to wit, 5,125, five thousand one hundred and twenty-five, cigars, being in No. 33 Tchoupitoulas St., were, by the order of this hon. court, sold, as will more fully appear by reference to the order of sale, return thereon written, and the process verbal attached in the suit of Hoffmier Bros. *vs.* Joseph Dreyfus, No. 10359 of the docket of this hon. court, *from* which sale was for the 5,125, five thousand — and twenty-five, cigars the sum of $77.50, seventy-seven dollars and fifty cents, which sum is held by the marshal subject to the judgment of this hon. court.

Returned Feb'y 14, 1884.

111 J. R. G. PITKIN,
U. S. Marshal,
By JNO. H. SIMONDS,
D'y U. S. Marshal.

Citation. Issued Oct. 31, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

S. JACOBY & CO.
vs.
JOSEPH DREYFUS. } No. 10380.

The President of the United States of America to Joseph Dreyfus:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city
112 of New Orleans, this 31st day of October, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste:

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Nov. 3rd, 1883, by the U. S. marshal, and on the 3rd day of Nov., 1883, I served a true copy of the within citation and

accompanying plaintiff-'petition on Joseph Dreyfus by handing the same to him in person.

J. R. G. PITKIN,
Marshal E. D. La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

Petition of Intervention & 3rd Opposition of A. Ermann. Filed Nov. 6th, 1883.

U. S. Circuit Court, E. D. of La.

S. JACOBY & Co.
vs.
J. DREYFUS. } No. 10380.

To the hon. the judges of the circuit court for the United States for the eastern district of Louisiana:

The petition of intervention and third opposition of Abra-
113 ham Ermann, who resides in Morgan City, Louisiana, respectfully shows—

That in the above entitled and numbered suit the United States marshal of this district, under and by virtue of a writ of sequestration therein issued, has sequestered and taken into his possession, in the warehouse of one Meyer Weill & Co., the following-described property as belonging the defendant, to wit:

5,700	cigars,	Susanas, of	50	in a	box.
9,700	"	Coquette, of	50	"	"
9,500	"	La Flor del Paine,	100	"	"
9,950	"	Pierre Cross,	50	"	"
6,600	"	Sweet Sixteen,	50	"	"
3,300	"	Soubrette,	50	"	"
4,400	"	Set Two,	50	"	"
4,000	"	Masher,	50	"	"
53,150					

all in the premises No. 34 Decatur street, in this city.

Now, your intervenor and third opponent shows that on the 29th October, 1883, your petitioner advanced to one Lehman Mayer the sum of fifteen thousand dollars, in evidence whereof the said Meyer executed, signed, and delivered to your petitioner his three promissory notes, each being dated October 29th, 1883, each for the sum of five thousand dollars, and payable, respectively, 40, 60, and 75
114 days after date, with 8 per cent. interest *interest* after maturity, and to secure the payment of said notes, principal and interest, the said Meyer did, by a clause in each of said notes and the endorsement of certain warehouse receipts, five (5) in number, and delivering of same to your petitioner, pledged the said fifty-three thousand one hundred and fifty cigars, with a quantity of other goods

and merchandize, to your intervenor and third opponent, which said notes and warehouse receipts are filed in suit No. 10371 of the docket of this court, and your petitioner prays that the same may be taken and considered a part of this petition.

Your petitioner, intervenor, and third opponent alleges and shows that said advances, with the notes evidencing the same and the pledge of said warehouse receipts to secure the payment of the same, were made in good faith and prior to the seizure under said writ, and under the law he is entitled to have said fifty-three thousand one hundred and fifty cigars delivered to him as pledgee upon executing a legal bond therefor.

Whereupon your petitioner prays leave to file this his intervention and third opposition herein, and that the plaintiff, de-
115 fendant, and marshal be notified thereof, and that after due proceedings he be declared to be the lawful pledge- of said fifty-three thousand one hundred and fifty cigars, and that a decree be entered in his favor that said cigars be delivered to him as such; that the said writ of sequestration be dissolved at the plaintiff's costs, and with all such damages for attorneys' fees and illegal detention as your intervenor and third opponent may have suffered thereby by the wrongful issuance and execution of said writ; and your petitioner prays for all such further order, relief, and decree as may in the premises be granted and this court is competent to give, and for general relief.

SINGLETON, BROWNE & CHOATE,
For A. Ermann.

Order.

Let the foregoing petition of intervention and third opposition be filed as prayed for.

Nov. 6th, 1883.

EDWARD C. BILLINGS, *Judge.*

Service accepted. New Orleans, Nov'b'r 7, 1883.
J. R. G. PITKIN,
U. S. Marshal,
By E. S. WURZBURGER,
D'y Marshal.

Citation on J. Dreyfus. Issued Nov. 6, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana*:

116 Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

S. JACOBY & Co. } No. 10380
vs.
J. DREYFUS.

The President of the United States of America to J. Dreyfus:

You are hereby summoned to comply with the demand contained

in the petition and of the petition of intervention and third opponent, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this sixth day of November, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste:

[SEAL.] F. H. WOOLFLEY, *Clerk.*

117 *Marshal's Return.*

Received Nov. 7th, 1883, by the U. S. marshal, and on Nov. 7th, 1883, I served a true copy of the within citation and accompanying petition of intervention and 3rd opposition on Joseph Dreyfus, defendant, by handing the same to him in person and leaving the same in his hands in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Citation on S. Jacoby & Co. Issued Nov. 6th, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

S. JACOBY & Co. *vs.* J. DREYFUS. } No. 10380.

The President of the United States of America to S. Jacoby & Co.:

You are hereby summoned to comply with the demand contained in the petition and of petition of intervention and third opponent, of which a copy accompanies this citation, or to deliver your answer

118 to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the [SEAL.] city of New Orleans, this sixth day of November, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste: ——— ———, *Clerk.*

Marshal's Return

Received Nov. 7th, 1883, by the U. S. marshal, and on Nov. 7th, 1883, I served a true copy of the within citation and the accompanying petition of intervention and 3rd opposition on S. Jacoby & Co., plaintiffs herein, by handing same to D. C. Labatt, Esq., in person, and leaving the same in his hands, the attorney for the aforesaid plaintiffs, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

119 *Appraisement. Filed Nov. 7, '83.*

U. S. Circuit Court, East Dist. of La.

S. JACOBY & Co. *vs.* JOSEPH DREYFUS. } No. 10380.

To the hon. the judges of said court:

The undersigned, duly appointed by the hon. court to appraise certain goods claimed by A. Ermann, intervenor, as pledgee, and which had been seized in above suit, respectfully report that they repaired to the Meyer Weil & Co. warehouse, No. thirty-four Decatur street, where they found in said marshal's custody, in apparent good condition, the goods hereafter described, which upon inspection of the invoice prices submitted to them they value as follows:

5,700	cigars,	Susana,	50	in box	319	20
9,700	"	Conquests,	50	" "	194	
9,500	"	La Flor del Pais,	100	" "	256	50
9,950	"	Pure Cross,	50	" "	199	
6,600	"	Sweet 16,	50	" "	165	
3,300	"	Soubrette,	50	" "	42	20
4,400	"	Set Two,	50	" "	105	60
4,000	"	Masher,	50	" "	120	
					1,401	50

120 Nov. 7, '83.

K. LOEW.
J. A. CHARBONNET.

Hearing and Submission.

Extract from Minutes, November Term, 1883.

NEW ORLEANS, MONDAY, *November* 12, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

S. JACOBY & Co.
vs.
JOSEPH DREYFUS. } No. 10380.

The rule in above case to rescind the order to release certain goods sequestered herein to A. Ermann, 3rd opponent, pledgee, as continued from the 9th inst., came on this day to be further heard, when it was then and there agreed by counsel for 3rd opponent that the rule in case No. 10374, returnable this day, be taken up and heard at the same time.

And, after hearing further evidence and the arguments of counsel for the parties respectively, the court took time to consider.

Answer. Filed Nov. 13th, 1883.

121 In the U. S. Circuit Court, 5th Circuit and Eastern District of Louisiana.

S. JACOBY & Co.
vs.
JOSEPH DREYFUS; A. ERMANN, Inter. }

Now comes the pl't'ff and, for answer to the intervention and 3rd opposition of A. Ermann, *and for answer* pleads a general and special denial to each and every allegation, except so far as herein admitted.

Respondents admit that, as creditors of Joseph Dreyfus, they instituted suit and sequestered certain goods on which they claim the vendor's lien and privilege, and that the same were seized by the marshal under the following circumstances: That early on Sunday morning, the 28th October, 1883, the citizens of New Orleans generally and the creditors of Joseph Dreyfus were informed that during the night-time, soon after 12 o'clock, of the 27th of October said Dreyfus was fraudulently and clandestinely moving his stock of goods from his store, on Tchoupitoulas street, to a store on Decatur, in New Orleans, occupied by Meyer Weil & David Levy as a hardware store, and that he was aided and assisted by one Lehman Meyer, of New Orleans, the alleged pledgor of intervenor and
122 3rd opponent; that while in the act and after several float-loads of goods had been driven off and unloaded at 34 Decatur St. said Dreyfus was arrested in further removing the balance of his stock until certain creditors obtained writs of attachment from this honorable court early on Sunday, the 28th Oct., and the mar-

shal took and held possession and placed said store and contents under seizure; that under the writ of sequestration resp'd't identified, by marks and numbers, 58,275 segars which had been thus fraudulently removed by Dreyfus in the dead of night, all which will more fully appear by the records and returns of the marshal hereto annexed and made part hereof. Now resp'd't denies that the ownership or possession ever legally passed to said Lehman Meyer, and the attempted delivery was simulated, collusive, and fraudulent, and that said Meyer was aiding and assisting said Dreyfus to commit a vile fraud.

That it was pursuant to a scheme to screen and conceal the property from pursuit by the just creditors of Dreyfus, and said Lehman Meyer's title to possession, through whom intervenors claims,
123 was a sham and simulation.

That it is false and fraudulent to claim that Meyer Weil & Co. keeps a public warehouse to receive goods on storage, or that Meyer Weil or David Levy knew at the time that these goods were in said store; that, on the contrary, the truth is that Lehman Meyer obtained possession of the key in the dead of night and without stating his object to said Weil. Resp'd't further says that said Meyer and Ermann well knew all these facts before and at the time of the pretended loan of $15,000, and that it is untrue that intervenor holds any valid act of pledge on said segars as enacted by the laws of La. Resp'd'ts denys further that there was any delivery, actual or constructive, consistent with common honesty and fair dealing between capitalist and merchant; that it must be an open, undisputed, quiet possession to have effect against 3rd parties and be untainted with fraud and complicity. Resp'd'ts further specially allege that the pretended warehouse receipts and the pretended pledge set up by intervenor lack all the essentials to
124 create a valid pledge and are null and void and simulated; that they conferred no legal possession or ownership on Mayer, and, consequently none on his transferee or pledgee, and that the said segars are still continued in the possession of Dreyfus. Resp'd't denies that intervenor is pledgee in good faith or an innocent 3rd party, because the failure and conduct of Dreyfus were notorious and published in the newspapers in this city on Sunday and Monday morning, the 28th and 29th Oct., and he was bound to enquire into the validity of his pretended title. Respondents also aver that neither Weil nor Meyer pretended to be in open and fair possession of said goods, and were merely midnight receivers of merchandize which the owner and master was trying to conceal and hide from his creditors on the eve of his failure and in the midst of his insolvency. Resp'd'ts further allege that said Dreyfus, Weil, Ermann, and Meyer combined and conspired fraudulently to conceal, hide, and dispose of said goods with the intent to cheat your resp'd't and other creditors, and that the whole transaction disclosed by
125 intervenor is a sham and simulation, illegal, null, and void, conferred no title or possession whatever from Dreyfus to either of them.

Wherefore resp'd'ts pray that said intervention and 3rd opposition

be dismissed with costs; that the pretended pledge be declared simulated, null and void, and illegal, and for judgment, with lien and privilege on the property sequestered, on its proceeds in preference to all others, and for general and equitable relief.

D. C. & L. L. LABATT.

Exception. Filed Nov. 13th, 1883.

Circuit Court U. S.

S. JACOBY & Co. *vs.* J. DREYFUS. } No. 10380.

Defendant, as an exception to pl'ffs' actions, avers that the court is without jurisdiction *ratione persone;* wherefore he prays that this action be dismissed.

A. H. LEONARD, *Att'y.*

Exception. Filed Nov. 26th, 1883.

126 S. JACOBY & Co. *vs.* J. DREYFUS. } No. 10380.

Defendant, as an exception to pl'ffs' action, avers same as premature, it appearing on face of pl'ffs' petition that obligations sued on are not due or exig-ble.

Wherefore he prays that pl'ffs' action be dismissed.

A. H. LEONARD, *Att'y.*

Order. Exception Filed by Defendant to be Treated as an Answer.

Extract from Minutes, November Term, 1883.

NEW ORLEANS, THURSDAY, *December 6th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

S. JACOBSBY *vs.* J. DREYFUS. } No. 10380.

Upon motion in that behalf by counsel for the plaintiffs it is ordered that the exception of prematurity of action herein filed by the defendant be treated as an answer with leave to said defendant to amend.

127 Waiver of jury. Copied at page No. —.

Judgment.

Extract from Judgment Book No. 12, fol. 438.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1883.

NEW ORLEANS, MONDAY, *February 18th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

S. JACOBY & Co.
vs.
JOS. DREYFUS. } No. 10380.

The parties in this cause having filed a stipulation waiving the intervention of a jury and submitted the cause to the court upon the issues of fact as well as of law, and the court, having considered the evidence and being fully advised in the premises, finds the issue of fact raised by the pleadings in favor of the plaintiffs.

It is therefore ordered, adjudged, and decreed that the plaintiffs, S. Jacoby & Co., do have and recover of and from the defendant, Joseph Dreyfus, the sum of twenty-nine hundred and eighty-two $\frac{60}{100}$ dollars, with five per cent. per annum from 3rd November,
128 1883, until paid, and costs of suit.

Judgment rendered February 18th, 1884.
Judgment signed February 23rd, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

Intervention Fixed.

Extract from Minutes.

NEW ORLEANS, FRIDAY, *April 2d*, 1886.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

S. JACOBY & Co.
vs.
J. DREYFUS. } No. 10380.

On motion of Singleton, Browne and Choate, attorneys for A. Ermann in the above-entitled cause, and upon suggesting to the court that the cause in equity having been disposed — by decree, it is ordered that the above-entitled cause, so far as the intervenor's rights are concerned, be assigned for trial at 10 o'clock Wednesday, April 7th, 1886, and that the plaintiffs, through their counsel, be notified thereof.

129 *Judgment.*

Extract from Judgment Book No. 14, fol. 30.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1885.

NEW ORLEANS, WEDNESDAY, *April 7th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

S. JACOBY & Co. *vs.* JOSEPH DREYFUS. } No. 10380.

The parties in this cause having filed a stipulation waiving the intervention of a jury and submitted the cause to the court upon the issues of fact as well as of law, and the court having considered the evidence and being advised by the pleadings in favor of Abraham Ermann, intervenor and third opponent—

It is therefore ordered, adjudged, and decreed that Abraham Ermann, intervenor and third opponent herein, be, and he is hereby, recognized to be the lawful pledgee of the 5,700 cigars, Susana brand; 9,700, Coquette; 9,500 La Flor de Paris; 9,950, Pure Cross; 6,600, Sweet Sixteen; 3,300, Subrette; 4,400, Set Two; 4,000, Mashers; total, 53,150 cigars, aggregating in value the sum
130 of fourteen hundred and one $\frac{50}{100}$ dollars ($1,401.50); that the same be delivered to him and the writ of sequestration herein issued be, and the same is hereby, dissolved at plaintiffs' costs.

Judgment rendered April 7th, 1886.
Judgment signed April 13th, 1886.

EDWARD C. BILLINGS, *Judge.*

131 *Petition. Filed Oct.* 31, 1883.

U. S. Circuit Court.

FREIBERG & WORKUM *vs.* JOS. DREYFUS. } No. 10379.

To the honorable the judges of the — United States in and for the 5th circuit and eastern district of Louisiana:

The petition of Freiberg and Workum, a commercial firm doing business in Cincinnati, Ohio, and composed of Julius Freiberg and Mrs. Workum, executrix and admr. of Freiberg, dec'd partner, all citizens of Ohio and residing in Cincinnati, with respect represents—

That Joseph Dreyfus, a citizen of Louisiana and residing at New Orleans, is justly and truly indebted unto pet'r in the sum of nine-

teen thousand dollars, with 5 % interest from judicial demand till paid, for this, to wit:

That your pet'r sold and delivered to said Dreyfus at his instance and request certain goods, wares, and merchandize at New Orleans during the year 1883, principally consisting of whiskey and liquors, and delivered same to him in said city, payable on time, all
132 which will more fully appear by the bills, accounts, and notes which will be shown at the trial or filed hereafter by supplemental petition. Now, your pet'r alleges that said goods are still in his possession, susceptible of identification and in the original packages, and stored at 33 Tchoupitoulas St. and at 34 North Decatur St., kept by one Meyer Weil and David Levy, and that said Dreyfus has become insolvent and failed to pay for them, and has committed acts of fraud by attempting in the night-time, on or about the 28th Oct., 1883, to hide and conceal quantities of goods, and among these the whiskeys sold by pet'r as aforesaid, and pet'r fears and has good cause to fear that def't will conceal, part with, and dispose of his property during the pendency of this suit and in order fraudulently to deprive pet'r of his lien and privilege thereon and with intent to defraud his creditors or give an unfair privilege to some of them. Pet'r alleges that the goods are still in the original packages and susceptible of identification, and that he can point out the same in the places where they are deposited, and that he is entitled by law to the vendor's privilege and lien thereon and to preference on their proceeds over all other creditors.

133 Wherefore, the premises, bond, and affidavit being considered, pet'r prays for the writ of sequestration; that Joseph Dreyfus be duly cited to appear and answer this petition, and that the marshal be ordered to sequester the whiskey and liquors sold by pet'r, to be pointed out by pl't'ff as being in their orignal packages, and that after due proceedings had petitioner have judgment in his favor for — thousand dollars, with interest from judicial demand till paid, and that such whiskey and liquors be sequestered and sold seperate and the proceeds paid over to pet'r in preference and with lien and privilege over all other creditors, and that the sequestration be maintained according to law, with costs, and for general and equitable relief.

D. C. & L. LABATT.

Affidavit for Sequestration. Filed October 30th, 1883.

U. S. Circuit Court.

FRIBERG AND WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

Personally appeared Leon Rheinstrom, who, being duly
134 sworn, says he is the agent and attorney of Messrs. Frieberg, Workum & Co., plaintiffs in the above petition; that the facts and allegations in the same are all true and correct, to the best

of his knowledge and belief, and that his principals are all absent from Louisiana, and that he has good cause to fear and does fear that the def't will conceal, part with, and dispose of the property in question, on which plaintiffs have a lien and privilege and in his possession, during the pendency of the suit and in order to defraud them of their rights.

LEON RHEINSTROM.

Subscribed and sworn before me October 30th, 1883.

F. A. WOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Order.

Let a writ of sequestration issue according to law and as prayed for by the pl't'ffs giving bond and security in the sum — ten thousand dollars.

DON A. PARDEE, *Judge.*

Oct. 30th, 1883.

135 It is agreed that the jury be waived.

D. C. & L. LABATT, *Att'y-.*
A. H. LEONARD,
Per M. MARKS, *Att'y.*

Writ of Sequestration. Issued 30th October, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial — and Eastern District of Louisiana.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to sequester and take in your possession according to law the goods and merchandize that may be identified by the plaintiffs herein, now in the store of the said Joseph Dreyfus, defendant, or Meyer Weill or elsewhere within this district, and the same you will safely keep until the further order of the court in the premises, and that you make due return of all
136 your acts & doings herein according to law.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of October, 1883.

[SEAL.] F. A. WOOFLEY, *Clerk.*

Marshal's Return.

Received Oct. 30th, 1883, by the U. S. marshal, and on the same day, month, and year I did execute the within writ of sequestration by seizing and taking into my possession twenty-nine (29) barrels of whiskey which were pointed out to me by the agent of plaintiffs, and which whiskey was then on the premises No. 34 Decatur street, in the city of New Orleans, and notified of the said seizure the defendant-, Joseph Dreyfus and Meyer Weill & Co., the whole as will more fully appear by reference to the annexed notice of seizure and the return thereon, which are made a part of this return. Subsequently Abraham Ehrmann, an intervenor herein, obtained an order of this hon. court permitting him to bond
137 the property herein sequestered in such sum as upon a report of appraisement may be the ascertained value of the said whiskey (29 barrels), and on the 7th November, 1883, the said intervenor, A. Ehrmann, did furnish his bond, with Mayer Weill as surety, in the sum stipulated. A copy of the order to bond as well as the bond itself and the appraiser's report were duly returned into court on the same day, and the bond duly transferred, as will appear thereon. Upon the execution of the bond the property was released from seizure and delivered to the said intervenor.

Ret'd Nov. 15th, 1883.

ED. S. WURZBURGER,
D'y U. S. Marshal.

Notices of Seizure Served on Joseph Dreyfus & Meyer Weill.

Copy.

OFFICE UNITED STATES MARSHAL,
EASTERN DISTRICT OF LOUISIANA.

U. S. Circuit Court, Eastern District of Louisiana.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS & MEYER WEILL. } No. 10378.

To Joseph Dreyfus & Meyer Weill:

You are hereby notified that by virtue of a writ of seques-
138 tration issued out of the above-named court in the above entitled and numbered suit and to me directed, I have this day seized and taken into my possession the following-described property to pay and satisfy the said writ, amounting to the sum of $— or thereabouts.

Description of property.

Twenty-nine barrels of whiskey.

DAN. A. ROSE,
Deputy U. S. Marshal.

Endorsed on back: On the 30th day of Oct., 1883, I served a true copy of the within notice of seizure on the defendant-, Joseph Dreyfus and Meyer Weil & Co., by handing the same to them in person. Dan. A. Rose, d'y U. S. marshal.

Citation. Issued October 31, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the U. S., Fifth Circuit and Eastern District of Louisiana.

FRIEBURG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

139 The President of the United States of America to Joseph Dreyfus:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 31st day of October, A. D. one thousand eight hundred and eighty-three, and of the *the* Independence of the United States of America the 108th year.

Teste:

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

140 Received Nov. 1, 1883, by the U. S. marshal, & on the 2d day of November, 1883, I served a true copy of the within citation and accompanying plaintiff-' petition on the defendants, Joseph Dreyfus, by handing the same to him in person in the city of New Orleans.

Ret. same day.

J. R. G. PITKIN,
U. S. Marshal, E. D. of La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

Petition of Intervention & 3d Opposition of A. Ehrmann. Filed Nov. 6th, 1883.

U. S. Circuit Court for the Eastern District of La.

FREIBOURG & WORKUM
vs.
J. DREYFUS. } No. 10378.

To the hon. the judges of the circuit court of the United States for the eastern district of Louisiana:

The petition of intervention and third *application* of Abraham Ermann, who resides in Morgan City, Louisiana, respectfully shows—

That in the above entitled and numbered suit the United States marshal of this district, under and by virtue of a writ of sequestration issued therein, has sequestered and taken into his possession, in the warehouse of one Meyer Weill & Co., the following de-
141 scribed property as belonging to the defendant, to wit:

Twenty-nine (29) barrels of whiskey.

Now your intervenor and third opponent shows that on the 29th October, 1883, your petitioner advanced to one Lehman Meyer the sum of fifteen thousand dollars, in evidence whereof the said Meyer executed, signed, and delivered to your petitioner his three promissory notes, each being dated October 29th, 1883, each for the sum of five thousand dollars and payable, respectively, 40, 60, and 75 days after date, with eight per cent. interest after maturity, and to secure the payment of said notes, principal and interest, the said Meyer did by a clause in each of said notes and the endorsements of certain warehouse receipts, five in number, and delivery of same to your petitioner, pledged the said twenty-nine barrels of whiskey, with a quantity of other goods and merchandize, to your intervenor and third opponent, which said notes and warehouse receipts are filed in suit No. 10371 of the docket of this court, and your petitioner prays that the same may be taken and considered as a part of this petition.

142 Your intervenor and third opponent alleges and shows that said advances, together with the notes evidencing the same and the pledge of said warehouse receipts to secure the payment of the same, were made in good faith and prior to the seizure herein.

And that under the law he is entitled to have the said twenty-nine barrels of whiskey delivered to him as pledgee upon executing a legal bond therefor.

Wherefore your petitioner prays leave to file this his intervention and third opposition herein, and that the plaintiff, defendant, and the marshal be notified thereof, and that after due proceedings he be declared to be the lawful pledgee of said twenty-nine (29) barrels of whiskey, and that a decree be entered in his favor that said whiskey be delivered to him as such; that the writ of sequestration herein be dissolved at plaintiff's costs, and with all such damages for attor-

ney fees and illegal detention as your intervenor and third opponent may suffer by the wrongful issuance and execution of said writ; and your petitioner prays for all such further order and de-
143 cree as may in the premises be granted and this court is competent to give, and for general relief.

SINGLETON, BROWNE & CHOATE,
For A. Ermann.

Order.

Let the foregoing petition of intervention and third opposition be filed as prayed for.

EDWARD C. BILLINGS, *Judge.*

Service hereof accepted. New Orleans, Nov. 7, 1883.

For J. R. G. PITKIN, *U. S. Marshal,*
By E. S. WURZBURGER, *D'y Marshal.*

Appraisement. Filed Nov. 7th, 1883.

United States Circuit Court, Eastern District of Louisiana.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS. } 10378.

To the hon. the judges of said court:

The undersigned, duly appointed by the hon. court to ap-
144 praise certain goods claimed by A. Ermann, intervenor, as pledgee, and which has been seized in above suit, respectfully report that they repaired to the warehouse of Meyer Weill & Co., No. 34 Decatur St., where they found in said marshal's custody, in apparent good condition, the goods hereafter described, which, upon an inspection of the invoice prices submitted to them, they value as follows:

2 bls.	De France whky.,	94½ galls.		$127 50
2 "	Lazy Ben "	87½ "		118 13
2 "	Gilt Edge "	103½ "		144 90
1 "	Incomparable,	46½ "		62 78
1 "	Southern Home,	46½ "		62 78
4 "	Monongahela XXX rye,	188½ "		267 67
6 "	Don Carlos,	304 "		486 40
6 "	Imp'l Cabinet,	308 "		462
5 "	La Belle,	263⅓ "		382 08
				$2,124 32

Nov'b'r 7th, '83.

K. LOEW,
J. A. CHARBONET.

Citation on J. Dreyfus. Issued Nov. 6, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

145 Circuit Court of the U. S., Fifth Circuit and Eastern District of Louisiana.

FRIEBERG & WORKUM
vs.
J. DREYFUS. } No. 10378.

The President of the United States of America to J. Dreyfus:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of Amercia, at the city of New Orleans, this sixth day of November, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

[SEAL.]

Teste: F. A. WOOLFLEY, *Clerk.*

146 *Marshal's Return.*

Received Nov. 7th, 1883, by the U. S. marshal, and on Nov. 7th, 1883, I served a true copy of the within citation and the accompanying petition of intervention and 3rd opposition on Joseph Dreyfus, defendant, by handing the same to him in person and leaving the same in his hands in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

Citation on Frieberg & Workum. Issued Nov. 6th, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the U. S., Fifth Circuit and Eastern District of Louisiana.

FRIEBERG & WORKUM
vs.
J. DREYFUS. } No. 10378.

The President of the United States of America to Frieberg & Workum:

You are hereby summoned to comply with the demand contained

in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of
147 Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city
[SEAL.] of New Orleans, this sixth day of November, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste: F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Nov. 7th, 1883, by the U. S. marshal, and on Nov. 7th, 1883, I served a true copy of the within citation and the accompanying petition of intervention and 3rd opposition on Frieberg & Workum, plaintiffs herein, by handing the same to D. C. Labatt, Esq., in person, and leaving the same in his hands, the attorney for the aforesaid pl'ffs, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

148 *Hearing and Submission.*

Extract from Minutes, November Term, 1883.

NEW ORLEANS, MONDAY, *November 12th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

The rule in above case to rescind the order to release certain goods sequestered herein to A. Ermann, 3rd opponent, pledgee, as continued from the 9th instant, came on this day to be further heard, when it was then and there agreed by counsel for 3rd opponent that the rule in case No. 10374, returnable this day, be taken up and heard at the same time.

And, after hearing further evidence and the arguments of counsel for the parties respectively, the court took time to consider.

Exception. Filed Nov. 13th, 1883.

Circuit Court U. S.

FRIEBERG & WORKUM
vs.
J. DREYFUS. } No. 10378.

149 Defendant, as an exception to pl'fs' action, avers that the court is without jurisdiction *rationa personæ*. Wherefore he prays that the action be dismissed.

A. H. LEONARD, *Att'y.*

Answer. Filed Nov. 13th, 1883.

U. S. Circuit Court.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS; A. ERMANN, Int. & 3rd Opp't. } No. 10378.

In the United States Circuit Court, 5th Circuit and Eastern District of La.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS; A. ERMANN, Int'v'r & 3rd Opponent.

Now comes the pl'tff &, for answer to the intervention and 3rd opposition of A. Ermann, *and for answer* pleads a general denial and special denial to each and every allegation, except so far as herein admitted.

Resp'd't- admit that as creditors of Joseph Dreyfus they
150 instituted suit and sequestered certain goods on which they claimed the vendor's lien and privilege, and that the same were seized by the marshal under the following circumstances: That early on Sunday morning, the 28th October, 1883, the citizens of New Orleans generally and the creditors of Joseph Dreyfus were informed that during the night-time—soon after 12 o'clock of the 27th Oct.—said Dreyfus was fraudulently and clandestinely moving his stock of goods from his store on Tchoupitoulas St. to a store on Decatur St., in New Orleans, occupied by Mayer Weil and David Levy as a hardware store, and that he was aided and assisted by one Lehman Mayer, of New Orleans, the alledged pledgor of intervenor and 3rd opponent; that while in the act and after several float-loads had been driven off and unloaded at 34 Decatur St. said Dreyfus was arrested in further removing the balance of his stock until certain creditors obtained writs of attachment from this honorable court early on Sunday, 28th Oct., and the marshal took and held possession and placed said store and contents under seizure; that

under the writ of sequestration resp'd't identified by marks and numbers twenty-nine bls. of whiskey which had been thus
151 fraudulently removed by Dreyfus in the dead of night, all which will more fully appear by the records and returns of the marshal hereto annexed and made part hereof. Now, resp'd't denies that the ownership or possession ever legally passed to said Lehman Mayer, and the attempted delivery was simulated, collusive, and fraudulent, and that said Mayer was aiding and assisting said Dreyfus to commit a vile fraud; that it was pursua-t to — scheme to screen and conceal the property from pursuit by the just creditors of Dreyfus, and said Lehman Mayer's title to possession, through whom intervenors claim-, was a sham and simulation; that it is false and fraudulent to claim that Mayer Weil & Co. keeps a public warehouse to receive goods on storage, or that Mayer Weil or David Levy knew at the time that there goods were in said store; that, on the contrary, the truth is that Lehman Mayer obtained possession of the key in the dead of night and without stating his object to said Weil. Resp'd't further says that said Mayer and Ermann well knew all these facts before and at the time of pretended loan of $15,000, and that it is untrue that intervenor holds any
152 valid act of pledge on said whiskey as enacted by the laws of Louisiana. Resp'd's deny, further, that there was any delivery, actual or constructive, consistent with common honesty and fair dealing between capitalist and merchant; that it must be an open, undisputed, quiet possession to have effect against 3rd parties and be untainted with fraud and complicity. Resp'd's further specially allege that the pretended warehouse receipts and the pretended pledge set up by intervenor lack all the essentials to create a valid pledge, and are null, void, and simulated; that they conferred no legal possession or ownership on Mayer, and consequently none on his transferree or pledgee, and that the said whiskey is still continued in Dreyfus. Resp'd't denies that intervenor is pledgee in good faith or an innocent 3rd party, because the failure and conduct of Dreyfus were notorious and published in the newspapers of this city on Sunday and Monday, the 28th and 29th Oct., and he was bound to inquire into the validity of his pretended title. Resp'd'ts also aver that neither Mayer nor Weil pretended to be in fair and open possession of said goods, and were merely midnight receivers
153 of merchandize which the owner and master was trying to conceal and hide from his creditors on the eve of his failure and in the midst of his insolvency.

Resp'd'ts further allege that said Dreyfus, Weil, Ermann, & Mayer combined and conspired fraudulently to conceal, hide, and dispose of said goods with the intent to cheat your resp'd't and other creditors, and that the whole transaction disclosed by intervenor is a sham and simulation, illegal, null, and void, — conferred no title or possession whatever from Dreyfus to either of them.

Wherefore resp'd'ts pray that said intervention and 3rd opposition be dismissed with costs; that the pretended pledge be declared simulation, null and void, and illegal, and for judgment, with lien

and privilege on the property sequestered or its proceeds, in preference to all others, and for general and equitable relief.

D. C. & L. L. LABATT,
Of Counsel for Pl'ff.

Exception. Filed November 26th, 1883.

154 FREIBERG & WORKUM
vs.
J. DREYFUS. } No. 10378.

Defendant, as an exception to pl'ffs' action, avers same as premature, it appearing on face of pl'ffs' petition that obligations sued on are not due and exig-ble.

Wherefore he prays that pl'ffs' demand be rejected.

A. H. LEONARD, *Attorney.*

Exception Treated as an Answer.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, TUESDAY, *December 6th*, 1883.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

FRIEBERG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

Upon motion in that behalf by counsel for the plaintiffs it is ordered that the exception of prematurity of action filed herein by the defendant be treated as an answer, with leave of said defendant to answer.

155 Waiver of jury. Copied at page —.

Judgment.

Extract from Judgment Book No. 12, folio 437.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1883.

NEW ORLEANS, MONDAY, *February 18th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

FREIBERG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

The parties in this cause having filed a stipulation eracing the intervention of a jury and submitted the cause to the court upon

the issues of fact as well as of law, and the court, having considered the evidence and being fully advised, finds the issue of fact raised by the pleadings in favor of the plaintiffs.

It is therefore adjudged and decreed that the plaintiffs, Frieberg and Workum, do have and recover of and from the defendant, Joseph Dreyfus, the sum of nineteen thousand dollars, with
156 five per cent. per annum interest from 2d November, 1883, until paid, and costs of suit.

Judgment rendered February 18th, 1884,

Judgment signed February 23d, 1884.

EDWARD C. BILLINGS, *Judge.*

Fi. Fa. Issued March 5th, 1884.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the Eastern District of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded that you demand from the defendant, Joseph Dreyfus, the sum of nineteen thousand dollars, with five per cent. per annum interest from 2nd November, 1883, until paid, and costs—clerk costs, $ —; attorneys' fee, $10—cash, which Freiberg and Workum lately received by judgment of the circuit court of the United States for the fifth circuit and
157 *and* eastern district of Louisiana, and if the same be not paid on demand that then you cause the same to be made out of the personal estate of the said Joseph Dreyfus in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district that then you cause the same to be made out of the real estate of the said Joseph Dreyfus in your district, and that you have these moneys before our said court to render to the said Freiberg and Workum for the judgment aforesaid on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of March, A. D. 1884, and 108th year of the Independence of the United States.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Mar. 6th, 1884, by the U. S. marshal, and on the 13th of May, 1884, I returned the within writ no property found after due demand made of both parties.

158 J. R. G. PITKIN,
U. S. Marshal,
By E. S. WURZBURGER,
D'y Marshal.

Order. Judgment of Feb'y 18th Annulled.

Extract from Minutes, November Term, 1883.

NEW ORLEANS, MONDAY, *March 17th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

FREIBERG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

On motion of D. C. and L. L. Labatt, counsel for plaintiff-, and on suggesting to the court that the judgment herein rendered on the 18th February, 1884, and signed on the 23d day of same month and year was the result of an error and the defendant was not duly represented it is ordered that the judgment in plaintiffs' favor be annulled and rescinded and the cause left as it was before the same was rendered.

159 *Judgment.*

Extract from Judgment Book No. 14, fol. 31.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1885.

NEW ORLEANS, WEDNESDAY, *April 7th*, 1886.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

FREIBERG & WORKUM
vs.
JOSEPH DREYFUS. } No. 10378.

The parties in this cause having filed a stipulation waiving the intervention of a jury and submitted the cause to the court upon the issues of fact as well as of law, and the court, having considered the evidence and being advised in the premises, finds the issues of fact raised by the pleadings in favor of Abraham Ermann, intervenor and third opponent. It is therefore ordered, adjudged, and decreed that Abraham Ermann, intervenor and third opponent herein be, and he is hereby, recognized to be the lawful pledgee of
160 the 2 bbls. De France whiskey, 2 bbls. Lazy Ben whiskey, 2 bbls. Gilt Edge whiskey, 1 bl. Incomparable whiskey, 1 bl. Southern Home whiskey, 4 bbls. Monongahela XXX rye whiskey, 6 Don Carlos XXX rye whiskey, 6 bbls. Imperial Cabinet XXX rye whiskey, 5 La Belle; total, 29 bbls., aggregating in value the sum of twenty-one hundred and twenty-four $\frac{32}{100}$ dollars; that the same be delivered to him and the writ of sequestration herein issued be, and the same is hereby, dissolved at plaintiff's costs.

Judgment rendered April 7th, 1886.
Judgment signed April 13, 1886.

EDWARD C. BILLINGS, *Judge.*

161 *Agreement of Counsel in Dreyfus et al. as to Testimony. Filed before J. W. Gurley, Master, 5 May, 1886.*

U. S. Circuit C't. In Equity.

JU'S FREIBURG *et al.*, S. JACOBY *et al.*, H. WEILLER *et al.*
vs.
DREYFUS *et al.*

In the above cases, in order to save costs, it is hereby agreed between the parties that the testimony taken and to be taken, with that on file in the cases at law, shall be considered as taken in the equity suits and used by either party, reserving such objections only as made therein at the trial of the above cases.

(Signed) SINGLETON, BROWNE & CHOATE,
Solicitors for Ermann.

Oct. 23, '84.

Agreement as to Testimony in Freiburg et al. Filed before J. W. Gurley, Master, 5 May, 1886.

U. S. Court. In Law & in Eq.

In Res FREIBURG & WORKUM.
" S. JACOBY & Co.
" H. WEILLER & Co.

It is hereby agreed between the undersigned, in order to
162 save costs, that the testimony by commissions now on file in the several cases may be used by either party in either of the cases at law or equity, or in both, as the same may be needed by either party, subject to exceptions as to the answers which were reserved therein.

(Signed) D. C. & L. L. LABATT, *For Comp. & Pl'tiffs.*
(Signed) SINGLETON, BROWN[illegible] CHOATE,
Att'ys for A. Ermann.
(Signed) A. H. LEONARD, *For L. Meyer.*

N. O., Ap'l 17, 1884.

163 Civil District Court.

S. GUMBEL & Co.
vs.
JOSEPH DREYFUS. } 9663.

FRIDAY, *Dec.* 21, 1883.

Upon a rule taken by the plaintiffs upon various attaching creditors in the circuit court of the United States, and also upon J. R. G. Pitkin, United States marshal.

Counsel for John Osborne, Son & Co. states that they claiming none of the property under seizure in this case seized in the store No. 33 Tchoupitoulas street, counsel for plaintiff in rule says: "Under that statement we discontinue as to them."

Counsel for plaintiff in rule having offered to introduce evidence in support of the allegations of this rule—

Counsel representing the United States marshal objected to the introduction of any evidence in support of the averments of said rule upon the grounds that it appears from said rule that the property in question is under seizure and in possession of said marshal by virtue of a process issuing out of the circuit court of the United States, and because said marshal is subject only to the orders of the United States circuit court in the premises, and as such marshal is not subject to the orders or jurisdiction of this honorable court.

Ruling.—The objection to the introduction of this evidence is overruled by the court upon the following grounds: The averments of the rule are in substance to the effect that the property in question had been seized by the sheriff of the civil district court for the parish of Orleans pursuant to the writ lawfully issued from
164 this court, and that said property is legally in the possession or custody of the sheriff, and that the marshal of the United States, pretending to act under writs of attachment issued from the circuit court of the United States subsequent to the issuance of the writ of attachment in question issued from the State court, obstructs the executive officer of this court in the disposition of the property in question. The court is of opinion that it is a legal impossibility for the marshal of the United States in his official capacity as marshal to have possession or to have obtained possession of the property which had legally been seized and was in the custody of the sheriff of the State court, and understands, therefore, that the meaning of the rule is that in so far as the marshal is obstructing the sheriff of this court in the discharge of the functions of his office he is acting without legal authority; therefore concludes that testimony as to the facts of the case and the precise status of the property in question, the circumstances surrounding the alleged obstruction by the marshal, is competent evidence in support of the rule.

To which ruling of the court Mr. Florance, on behalf of the party that he represents, reserves the objection made by Mr. Rice in lieu of a bill of exceptions.

Counsel for C. Lazard & Co. and William Adler reserves a bill to the ruling of the court.

Counsel for plaintiff in rule offers in evidence the petition, writ of attachment, and the return thereon in the present suit; also the writ of *fieri facias* in this cause and the sheriff's return thereon.

165 Also offers in this connection the writ of attachment and the return thereon in the suit of S. Gumbel & Co. against Joseph Dreyfus, No. 9663 of the docket of this court, and the same writ of attachment and the return thereunder in the suit of Simon & Loeb against Joseph Dreyfus, No. 9664 of the docket of this court.

Also in those cases the writs of *fieri facias* and the return of the sheriff thereon in each case and the judgments in all cases and in the instant case also.

Counsel for C. Lazard and William Adler in the suits in the United States circuit court objects to the evidence offered herein and to any testimony in the present suit herein; that plaintiffs in rule have no right to proceed herein; that the parties made defendants, William Adler and C. Lazard, are pursuing their rights in the United States court; that they have been in no way connected with the acts herein alleged to have been done illegally by the marshal; that if their attachments in that court were not levied in a legal manner the defendant and his creditors, plaintiff in rule herein, who have no better rights than the defendant, are at liberty only to contest and move to dissolve those attachments in the United States court.

Judge Bonner makes the same objection that Mr. Gilmore made in behalf of Elias Block and Son.

Ruling.—If this objection is to be regarded as an objection
166 to the introduction of evidence in support of this rule, the court overrules it on the grounds just above given for overruling the objection made by the counsel for the United States marshal.

To which ruling of the court counsel for the aforesaid defendants in rule makes this as their bill of exceptions.

Counsel for Eilas Block & Son makes the same exceptions.

Mr. W. J. GRADY sworn for plaintiff in rule.

Direct examination by Mr. DINKELSPIEL:

Q. You are a deputy sheriff?

A. Yes, sir.

Q. Were you such at the time of the seizure in the case of Gumbel against Dreyfus?

A. Yes, sir.

Q. Were you charged with the execution of the writ of attachment in that case?

A. Yes, sir.

Q. Have you got the returns as far as you made them?

A. Yes, sir. (Witness produces documents.)

Q. Please state it.

A. The return I have on the back of my writ is as follows: "Made demand on Daniel Rose, deputy marshal of the United States circuit court, for possession of the property described in my written notice, viz., the contents of the store No. 33 Tchoupitoulas street, which was refused by said marshal."

167 Q. Under what circumstances and when was that made?

A. That was made on the morning of October 29th, just about a second or two after 12 o'clock.

Q. Was the notice served on the defendant?

A. Yes, sir; served that morning at one o'clock; served by myself.

Q. What day of the week was that?

A. That was Monday morning, sir. I had occasion to go around there about half past eleven o'clock Sunday night and I waited until Monday morning. I heard the cotton exchange clock strike 12, and right after it struck 12 I executed the writ. I went there at half past eleven so as to have my seizure first, so as to come to a legal day.

By Mr. Buck:

Q. Was anybody there when you went there at half past eleven?

A. There was a lot of people inside of the store.

Q. That was Sunday?

A. Yes, sir; Sunday.

Q. Who were those people in the store?

A. There was Mr. Rose; there was a young man who was on Farrell's police, and several other parties whom I don't know.

Q. You did not, then, remain in the store from half past eleven o'clock until after 12 o'clock?

A. No, sir. You misunderstood me about getting in the store at half past eleven. I said I went around there at half past eleven to be there so as when it would come a legal day.

168 Q. Then you were not in the store at half past eleven?

A. No, sir.

Q. Had you been inside of that store during the day?

A. I went around about 7 o'clock Sunday evening to look at where the store was, so as after 12 o'clock or late in the night I could go there to the store, and I wanted to be first to execute my writ.

Q. You had a writ, then, for that day in your hands; when did you receive that writ; does the return show?

A. The writ was issued on October 27th, 1883.

Q. When did it reach your hands?

A. I think it was placed in my hands somewhere about—I could not say the hour. I know I left Mr. Hart at his office within an hour.

Q. You had the writ at 12 o'clock, at the time you made the seizure?

A. Yes, sir.

Q. Monday morning?

A. Yes, sir.

By the COURT:

Q. Had that writ been issued before that day—Sunday?
A. It is dated the clerk's office, 27th of October.
Q. That was the writ issued on the 27th of Oct., under which——
A. I executed on Monday morning.

By Mr. BUCK:

Q. Did you put a keeper in that store?
169 A. Yes, sir. I made a demand on Mr. Rose, who told me he was the United States marshal. I told him I had three writs emanating from the civil dist. court for the parish of Orleans, and I demanded possession of that property and he refused to turn it over to me. I then told him I would place my keeper upon the doors.
Q. Did you do so?
A. Yes, sir.
Q. Keeper there yet?
A. Yes, sir.
Q. Did you do everything that you could do without resorting to violence to take actual possession of that property?
A. Yes, sir. I did not resort to any violence because I did not think I had that power to dispossess an officer after he had told me he was a marshal coming from the United States circuit court.
Q. You know personally that Mr. Rose was a deputy marshal?
A. Yes, sir.
Q. Did he tell you that he had any writ at the time?
A. He told me that he was in possession of that store by virtue of writs emanating from the United States circuit court or dist. court, I don't know which.
Q. He did not show you the writs?
A. No, sir.
Q. Does the return on your writ show when you returned on Mr. Dreyfus?
A. Yes, sir.
170 Q. When was it served?
A. I served it the same night or the same morning, on October 29th, at one o'clock a. m. "Served copy of the within notice of seizure to Joseph Dreyfus, defendant herein, in person."
Q. There was no obstruction, then, for the seizure from anybody except this Mr. Rose?
A. No, sir.
Q. The property was not in the defendant's possession at the time?
A. I served the notice of the seizure on the defendant at his domicile.
Q. I say the defendant did not attempt to exercise any control and prevent you from taking it?
A. None whatever, sir.
Q. The sheriff's keeper been there since that time?

A. Yes, sir. I have a day keeper and a night keeper stationed at the door.

Q. Did you have any other writs from the civil district court at the same time?

A. Yes, sir I had two other writs.

Q. Name them.

A. One in the case of S. Gumbel *versus* Joseph Dreyfus, No. 9662, of the civil district court. Then I have a writ No. 9663, S. Gumbel & Co. *vs.* Joseph Dreyfus, and No. 9664, Simon & Loeb *vs.* Joseph Dreyfus.

By the COURT:

171 Q. Did this Mr. Rose exhibit to you any authority from the United States court for obstructing your possession or seizure of that property?

A. Not at that hour.

Q. Do you know whether he had any writs from the United States court at that time against that property?

A. I know at 7 o'clock, when I went around there to locate where the store was, on the invitation of Mr. Rose I went inside and I saw him exhibit to a press reporter of some papers which looked to me to be legal documents. He was showing them privately to him and of course I didn't see them.

Q. Then your answer is, you don't know?

A. No; I don't know. When I went to execute my writs the doors were closed—locked up—and I knocked at the door and asked for Mr. Rose. Mr. Rose came and I told him my business, and then he didn't exhibit to me any writs. He told me he held that store by virtue of him being a deputy United States marshal.

Q. At the time that you made this seizure after 12 o'clock on Monday morning, do you know now whether at that time Mr. Rose, claiming to act as United States deputy marshal, had any writs against that property from the circuit court of the United States?

A. No, sir.

Q. You have only his word for it that he was acting under the authority of that court?

172 A. Yes, sir.

By Mr. BUCK:

Q. You executed the writs in the cases you have named in the same manner and at the same time in which you executed the writ in this case?

A. Yes, sir.

Q. There are writs of execution in the hands of the sheriff now?

A. Yes, sir.

Q. Did you make a subsequent levy under the writ of execution?

A. No, sir; one of the other officers.

Q. I mean the sheriff.

A. Yes, sir; the sheriff.

Q. You now hold the property by virtue of two writs?

A. Yes, sir.

Q. Your keeper still there?
A. Yes, sir.
Q. Have you attempted to take possession of that property since under the writ of execution?
A. The sheriff has; yes sir.
Q. The writ of execution directs him in the usual words to seize and sell the property?
A. Yes, sir.
Q. What is the reason you have not carried out the instructions of that writ and sold the property?
A. The deputy in the execution of the writ has been prevented from taking the property.
173 Q. By whom and how?
A. By the marshal of the district.
Q. In what way?
A. In refusing him admittance into the store.
Q. In the same manner as he did——
A. In the same manner as he did under the conservative writs of attachment.
Q. Is there any one on the property now claiming to hold it as deputy marshal of United States court?
A. I presume there is; I don't know. I have never been at the store since that night.
Q. Has anybody but yourself—when I say yourself I mean the sheriff or this person claiming to act as United States marshal or deputy United States marshal—have any control over this property or attempted to exercise any control over it?
A. No, sir; none that I know of but those two parties.
Q. Your deputy is stationed at the door?
A. Yes, sir.
Q. If he performed his duty could any property be removed or in any way interfered with?
A. No, sir; I would not allow any property to go out.
Q. You instructed your keeper not to allow any property to go out?
A. Yes, sir.
Q. The sheriff, then, keeps as much possession and control over the property as the circumstances and the facts permit?
—. ——.
174 Q. And the only reason you have not actual possession of the goods in the store is that you have been obstructed as you stated and you have not resorted to any violence to get possession?
A. No, sir; I have not resorted to any violence.

Cross-examination by Mr. RICE:

Q. The sheriff's keepers are outside?
A. Yes, sir.
Q. Never have been inside?
A. No, sir.

By Mr. FLORANCE:

Q. Have you touched any of the property that you have attempted to seize?

A. No, sir; couldn't touch it because we wouldn't be allowed in.

Q. And the only seizure made was by demanding it from the outside of the store and notifying the defendant in the case?

A. Yes, sir.

By Mr. BUCK:

Q. You mean Mr. Rose?

A. Yes, sir. I made a demand on Mr. Rose and he wouldn't let me inside of the store, and the only way I had to do was to ask him to come outside, and I made a demand on him. I told him I had three writs.

Q. Did you ask to be allowed to go inside?

A. Yes, sir. The night was dark and wet. I even asked him for protection from the weather, outside of my official capacity,
175 to go inside.

Q. He refused the deputy sheriff and the keepers entrance into the store?

A. Yes, sir.

By Mr. FLORANCE:

Q. It was because he was United States marshal that you did not attempt to force an entrance?

A. Yes, sir.

Q. An ordinary individual claiming that way, you would have forced an entrance?

A. Yes, sir.

By Mr. BUCK:

Q. As matters now stand, if the sheriff were to advertise and sell this property under the writ you could not give the actual possession to the vendees?

A. No, sir; I could not inventory it. I could not have it appraised. I could not prepare it.

Q. The difficulty is that because persons there refuse you admission?

A. Yes, sir.

By Mr. RICE:

Q. Simply because you had not possession?

A. Simply because I have not got possession.

By Mr. DINKELSPEIL:

Q. You have got your keepers there, as you have stated before?

A. Yes, sir.

176 By the COURT:

Q. From the time that you first undertook to make the seizure up

to the present time, I understand that you have maintained the sheriffs at the entrance to the building in which this property has been taken—at the outside of the entrance?

A. Yes, sir.

By Judge BONNER:

Q. How many doors are there to that building?

A. I think there is three.

Q. How many keepers have you got there?

A. I have four keepers there. I have a keeper under Braughn, Buck & Dinkelspiel's writs; one under Lehman & Co.'s writs; that is two; a day and a night keeper, and a keeper on Mr. Horace Dufour's writs; two in the day and two at night.

Q. Have you a keeper at each door?

A. I don't know, sir. I don't suppose they stay at each door.

By Mr. BUCK:

Q. What kind of a building is this 33 Tchoupitoulas street; a plain square brick store?

A. I was there at 12 or 1 o'clock at night. It is a brick store.

Q. It is not a corner building?

A. No, sir.

Q. There is no side entrance or exit?

A. Not that I know of. I believe, from about the location of the building, it would be about the centre of the block.

By Judge BONNER:

177 Q. At the time you went there or at the time you attempted to make this service of attachment and ever since that time the United States marshal has been represented by his deputy inside of the store?

A. Yes, sir.

Q. And your keepers have been outside of the store?

A. Yes, sir.

Q. Your keepers have never at any time been inside of the store?

A. I could not tell you that, whether they have been inside or not.

By Mr. FLORANCE:

Q. You don't know that they had?

A. No, sir.

By Mr. DINKELSPIEL:

Q. They have tried very hard to get in?

A. Yes, sir; and I tried very hard to get them in.

By Mr. FLORANCE:

Q. Did you ask permission to get in?

A. No, sir; I demanded.

Q. Your trial to get in was only by words?

A. I demanded possession through the three writs and my authority from this court.

Q. I say your demand was only verbally?

A. Yes, sir; that was all; there was no violence.

Mr. GARVEY sworn on behalf of plaintiffs in rule.

Direct examination by Mr. BUCK:

178 Q. You are one of the deputy sheriffs of this court?

A. Yes, sir.

Q. Did you have anything to do with the execution of these writs in this case—execution or attachment?

A. Yes, sir; I had.

Q. What was it? State how you executed it.

A. I had something to do with the execution of the writs of *fieri facias*, S. Gumbel against Joseph Dreyfus, No. 9662, and S. Gumbel & Co. *vs.* Joseph Dreyfus, No. 9663, and Simon & Loeb *vs.* Joseph Dreyfus, No. 9664.

Q. What are they?

A. Writs of *fieri facias*.

Q. In your capacity as deputy sheriff what did you do under those writs?

A. I went up to the store of Joseph Dreyfus, No. 33 Tchoupitoulas street, and when I got there the store was locked, the doors were closed. I knocked on the door and nobody came, and I knocked louder, then I kicked on the door, and somebody inside wanted to know what I wanted. I told him to open the door, that I wanted to speak to him. There was something going on and I couldn't hear him. Then he says, "Go on and speak, I can hear you in here." I says, "Who are you?" He says, "I am a deputy marshal." I says, "You are one of the marshal's keepers?" He says,

179 "Yes; who are you?" I says, I am deputy sheriff, with two writs to get possession of that property, and I have got a keeper here to put in as soon as I can get in, and I says, "You refuse me admittance?" He says, "Yes; I won't allow you in at all."

Q. What did you do then?

A. I walked off. I left the keeper there still at the door.

Q. The keeper was retained there?

A. Yes, sir; he remained there.

Q. Was there a keeper there at the time you got there under your writ of *fieri facias* stationed by the sheriff under the writs of attachment?

A. I don't know which attachment he was under.

Q. But the sheriff's keeper was there?

A. Yes, sir; he was on the outside of the door.

Q. The reason you didn't go in was because he refused to open the door?

A. Yes, sir. He wouldn't let me in; didn't open the door.

Q. Did he show you any papers or writs from the United States court?

A. The door was locked.

Q. Simply told you that they were holding there and nothing else?

A. Yes, sir.

Q. Do you know the fact whether or not those persons were really what they represented themselves to be?

A. I don't know, sir, who they are or what they were. They were speaking to me through a closed door and I could not see any of them.

Q. You served a notice on the defendant in the case?

A. No, sir.

180 Q. There was a notice served on him?

A. Yes, sir; I believe so. Yes, sir. "On December 6th, 1883, served copy of"——

Q. Does it say where Joseph Dreyfus was served?

A. Personally. Don't say where.

Counsel for plaintiff in rule offers in evidence the returns made by the sheriff.

By Mr. DINKELSPIEL:

Q. Why did you put the return in that form of expression? Did you see the United States marshal there?

A. No, sir; I didn't see him. I couldn't see him.

Counsel for William Adler and C. Lazard objects to the witness contradicting his returns.

Q. The man in possession claimed to be a United States deputy marshal?

A. Yes, sir; and I demanded possession of him.

Q. And he refused to let you in there?

A. Yes, sir.

Q. Did you desire to show that fact?

A. Yes, sir.

Q. And the manner in which you have stated or related is the manner in which you did execute that writ?

A. Yes, sir.

Mr. WALSHE sworn on behalf of plaintiff in rule.

Direct examination by Mr. BUCK:

181 Q. You are chief deputy of the civil sheriff?

A. Yes, sir.

Q. Do you know anything about the execution of the writ of attachment and the *fieri facias* issued in this case? Do you know anything about how the writs of attachment and *fieri facias* in the case before the court and in cases Nos. 9663 and 9664 of the docket of this court were executed?

A. Of the writ of attachment I know nothing except what the officers reported to me—about their going there that night and finding the marshal there in possession before midnight on Sunday. When the writs of *fieri facias* came down I received instructions to go and make demand of the marshal for the possession of the store

under these writs. Before sending the officer, or just as he was about to go, I called up Mr. Wurzberger, the chief deputy United States marshal, through the telephone, and told him what I was about to say, that I had received instructions to that effect, and he said, "All right. I suppose I have not the authority to give you possession." I told him all right, I had to send anyhow and make the demand; and I sent and made the demand, and the officers informed me that the marshal's keepers spoke to him through the door. I recognized Mr. Wastberger's voice through the telephone and he refused to give possession.

Q. You had a keeper on that place from the time the attachment was executed?

A. Yes, sir; we have had keepers there day and night on the outside.

182 Q. How many keepers?

A. Two in the day and two in the night.

Q. What were the instructions, if any, to those keepers?

A. To let nothing be taken away from there, and to follow it if it was taken away and report to us.

Q. How do you place those keepers?

A. There was one for day and one for night on your writs, and then I believe there is another from——

Q. I mean in regard to the condition of the premises and the location of the place. How do you station them?

A. They are stationed on the sidewalk. I have not been around there to see.

Q. Your seizure was done from the very commencement of the case, was it not?

A. Yes, sir.

Q. The defendant has never complained or objected to the writ?

A. I have not heard of it. He has never made any complaint to me.

Q. Do you know of anybody claiming as owner refusing him permission to go in there?

A. No, sir.

Q. It is only the obstruction of the persons claiming to act as marshals of the United States circuit court?

A. That is all.

Mr. JOSEPH SIMON, Jr., sworn in behalf of plaintiff in rule.

183 Direct examination by Mr. DINKELSPEIL:

Q. Do you know the store of Joseph Dreyfus, the defendant herein?

A. Yes, sir.

Q. Where is it located and what streets is it between?

A. I believe No. 33 Tchoupitoulas street.

Q. Were you about those premises on Saturday preceding the Monday we are speaking of?

A. I was in the store on that Saturday many times.

Q. Was there a seizure on those premises on Saturday?

A. I don't know.
Q. Who had possession on that Saturday?
A. Mr. Dreyfus.
Q. Were you there the next day, on Sunday?
A. Yes, sir.
Q. Who was in there that day?
A. I understood there was a man in there who pretended to be a United States marshal at about 11 or 12 o'clock; 11 o'clock.
Q. That was on Sunday?
A. Sunday.
Q. Do you know the name of that so-called marshal?
A. No, sir.
Q. When did you first see him there?
A. About 11 o'clock.
Q. Morning or night?
A. Sunday morning.
Q. Do — know when he got there—when this gentleman arrived?
A. He was there before I got there.
184 Q. You don't know when he got there?
A. No, sir.
Q. Are you a merchant in this city?
A. Yes, sir.
Q. You are one of these judgment creditors?
A. Yes, sir.
Q. Were you acquainted with the stock that the defendant, Mr. Dreyfus, kept about the time of these seizures?
A. Yes, sir.
Q. Will you state about the value of that stock at the time of these suits?
A. I think the stock was from about 10 to 12 thousand dollars.
Q. You had seen it on Saturday prior to these seizures?
A. Yes, sir.
Q. When Dreyfus, the defendant, was in possession?
A. Yes, sir.
Q. How late on Saturday?
A. I was there in the morning and I was there in the evening about 4 o'clock.

Cross-examination by Mr. FLORANCE:

Q. At what time on Saturday were you there?
A. 4 o'clock. I was a good many times there.
Q. And the stock there was worth about 10 or 12 thousand dollars?
A. 10 to 12 thousand dollars.

Plaintiff in rule closes.
Plaintiff in rule withdraws the closing of the case.

185 *Writ of Attachment. Issued October 29th,* 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

KREBS & SPIESS
vs.
JOSEPH DREYFUS. } No. 10355.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to attach and take into your possession, according to law, the property, rights, and credits of the defendant, Joseph Dreyfus, that may be found within our said district to satisfy the claim of the plaintiff, amounting to the sum of four thousand nine hundred and seventy-one $\frac{25}{100}$ dollars, which will mature and become due on the 4th day of January, 1884, with interest thereon at the rate of — per cent. per annum from the — day of —— until paid, and costs, and to hold the same to satisfy the judgment of the court in the premises.

And of your acts and doings herein that you make due
186 return according to law. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of October, 1883.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Oct. 29, 1883, by the U. S. marshal, and immediately on receipt of this writ I levied the same upon all and singular the contents of the store and warehouse in the rear thereof occupied by the defendant and situate No. 33 Tchoupitoulas street, in this city, consisting of wines, liquors, beer, cigars, &c., &c., and notified the defendant of said seizure, the said property being at that time in my possession by virtue of a writ of attachment issued out of this hon. court in the suit of Corning & Co. *vs.* Jos. Dreyfus, No. 10354 of the docket, to which return reference is made. I also did, on the same day, seize the unexpired term of the lease to a certain store and warehouse situate No. 33 Tchoupitoulas street, in the city of New Orleans, entered into by C. T. Richardson, as lessor, and Jos. Dreyfus, as lessee, notifying the said C. T. Richardson and Jos. Dreyfus of said seizure. I also did, at 9 o'clock a. m., same day, notify in writing the recorder of mortgages for the parish of Orleans and city of New Orleans of the seizure of the following-
187 described real estate: A lot of ground and residence and other improvements thereon known as No. 324 Josephine street, in the city of New Orleans, in the square bounded by Jose-

phine, Prytania, Colliseum, & Jackson streets, said seizure being recorded on a seizure book on file in my office. On the fifth day of November, 1883, Geo. A. Drury, collector of internal revenue of this district, removed from No. 33 Tchoupitoulas street, for an alleged violation of internal revenue laws, fourteen packages of whisky and an empty cask, as more fully specified in my return to the writs of attachment of Corning & Co. *vs.* this defendant, No. 10354 of the docket of this hon. court; and all the balance of the merchandise seized as aforesaid in No. 33 Tchoupitoulas street were subsequently sold by the U. S. marshal by virtue of three different orders of sale issued in this suit and the following:

Maddux, Hobart & Co. *vs.* Jos. Dreyfus, No. 10356, and Hoffheimer Bros. *vs.* Jos. Dreyfus, No. 10359 of the docket of this hon. court, to which orders of sale and more particularly to the return written on the order of sale of Hoffheimer Bros. *vs.* Jos. Dreyfus, No. 10359, reference is made, and the lease and right of occupation herein seized was subsequently seized and advertised for sale under a writ of *fieri facias*, herein issued in favor of plaintiff against this defendant—reference is made to the return on said *fi. fa.*—the said sale to take place Friday, Feb'ry 15th, 1884, at 12 o'clock m. Various other writs issued out of this hon. court were on the same day and subsequent days levied upon all the property herein seized.

188 Due return upon each will be made. This return is written up to the 14th day of Feb'y, 1884, and before all the property herein seized was disposed of.

(Signed) E. S. WURZBURGER,
D'y Marshal.

U. S. Circuit Court, Eastern District of Louisiana.

KERBS & SPIESS
vs.
JOSEPH DREYFUS. } No. 10355.

To Joseph Dreyfus:

You are hereby notified that by virtue of a writ of attachment issued out of the above-named court in the above-entitled and numbered suit and to me directed I have this day seized and taken into my possession the following-described property to pay and satisfy the said writ, amounting to the sum of $4,971.25 or thereabouts:

Description of Property.

All and singular the lot, piece, or parcel of ground, together with all the buildings and improvements thereon, comprised within Josephine, Prytania, Colesium, and Jackson streets, in the city of New Orleans, and designated by the municipal number 324 Josephine street, in the city of New Orleans.

New Orleans, Oct. 29, 1884.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

189 *Return.*

On the 29th day of Oct., 1883, I served a true copy of the within notice of seizure on the defendant, Joseph Dreyfus, by handing the same to him in person.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Writ of Attachment. Issued October 29th, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

HOFFHEIMER BROTHERS. } No. 10359.
—.
JOSEPH DREYFUS.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to attach and take into your possession, according to law, the property, rights, and credits of the defend
ant, Joseph Dreyfus, that may be found within our said dis-
190 trict to satisfy the claim of the plaintiffs, Hoffheimer Brothers, amounting to the sum of four thousand five hundred and thirteen & $\frac{26}{100}$, ($8637.21 of which will mature Nov. 6th, 1883; $1,275.20 on March 4th, 1884, and $2,600.85 on January 4, '84) dollars, with interest thereon at the rate of — per cent. per annum from the — day of —— until paid, and costs, and to hold the same to satisfy the judgment of the court in the premises.

And of your acts and doings herein that you make due return according to law. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of October, 1883.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Oct. 29th, 1883, by the U. S. marshal, and immediately on receipt of this writ levied the same on all the contents of the store and the warehouse by the defendant occupied and situate No. 33 Tchoupitoulas street, in the city of New Orleans, the said property being at that time in my possession by virtue of other process issued out of this hon. court, and of said seizure I notified the defendant in writing. I also did on the same day make general seiz-
ures by garnishment process in the hands of Lehman Mayer
191 & Messrs. Mayer Weill & Co., which firm is composed of Mayer Weill & David Levi, as will more fully be seen by reference to the annexed notice of seizure and the return thereon,

marked A for reference. From said garnishee seizure nothing came into the U. S. marshal's hands up to date. I also on the same day made a seizure of the following-described real estate: A lot of ground, with all the buildings and improvements thereon, situated in square bounded by Josephine, Prytania, Jackson, & Colliseum streets, described as the lot No. 8 of said square, in the late suburb Lafayette; said lot measures 60 feet front on Josephine street by a depth between parallel lines of 120 feet, and is situated 60 feet from the corner of Prytania street, notifying the defendant of said seizure in writing, and also caused said seizure to be recorded on the same day at the office — recorder of mortgages, parish of Orleans & city of New Orleans, and subsequently all of the merchandize contained in No. 33 Tchoupitoulas street was sold by virtue of three different orders of sale issued out of this hon. court in this cause and in suits entitled, No. 10355 & 10356, Krebs & Spiess and Maddux, Hobart & Co. *vs.* this defendant. Reference is specially made to the return of the order of sale herein issued and to the proces verbal thereunto attached. A writ of *fieri facias* was herein issued and is now in the marshal's hands for execution, and the same is levied on the proceeds of sale above referred to, which proceeds of sale are also levied upon by virtue of various other writs and orders issued from this hon. court. They are held subject to final judgment as to — is 192 entitled to them. Not all the property herein seized has as yet been disposed of. This return is written up to this 14th day of Feb'y, 1884.

(Signed) E. S. WURZBURGER,
D'y Marshal.

(Original.)

UNITED STATES OF AMERICA:

United States Circuit Court, Eastern District of Louisiana.

HOFFHEIMER BROTHERS
vs.
JOSEPH DREYFUS. } No. 10359.

To Lehman Meyer and Meyer Weill and Company, composed of Meyer Weil and David Levy:

Please take notice that, by virtue of attachment issued in the above-mentioned suit, I seize in your hands all the goods, chattels, lands, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now have or hereafter have in your possession or under your control belonging to the defendant, Joseph Dreyfus, which you will hand over to me.

U. S. marshal's office, New Orleans, Oct. 29, 1883.

(Signed) DAN. A. ROSE,
Deputy Marshal.

193 *Return.*

On Oct. 29th, 1883, I served copies hereof on the persons herein named in the following manner, to wit:

Lehman Meyer personally.
Meyer Weill & Co., p's'lly on Meyer Weill.
Meyer Weill personally.
David Levy personally.

All served in the city of New Orleans on the date as above set forth.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

U S. Circuit Court, Eastern District of Louisiana.

HOFFHEIMER BROS.
vs.
JOSEPH DREYFUS. } No. 10359.

To Joseph Dreyfus and the recorder of mortgages for the parish of Orleans and city of New Orleans:

You are hereby notified that, by virtue of a writ of attachment issued out of the above-named court in the above entitled and numbered suit and to me directed, I have this day seized and taken into my possession the following-described property to pay and satisfy the said writ, amounting to the sum of $4,513.26 or thereabouts.

194 Description of property.

A lot of ground, with all the buildings and improvements thereon, situated in square bounded by Josephine, Prytania, Jackson, and Coliseum streets, described as the lot No. 8 of said square, in the late suburb Lafayette. Said lot measures 60 feet front on Josephine street by a depth between parallel lines of 120 feet, and is situated 60 feet from the corner of Prytania street.

New Orleans, Oct. 29th, '83.

(Signed) E. S. WURZBURGER,
D'y Marshal.

Return.

Seizure of real estate under writ of attachment.

On Oct. 29th, 1883, I served a copy of the within notice of seizure on Joseph Dreyfus, defendant, by handing the same to him in person in the city of New Orleans.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

195 *Transcript from Civil District Court. Offered March* 20, 1884.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662, Division "B," C'l D't C't.

Petition. Filed October 27th, 1883.

To the honorable the civil dist. court for the parish of Orleans:

The petition of Cornelius Gumbel, a resident of this city, with respect represents that Joseph Dreyfus, also of this city, is justly and truly indebted unto petitioner in the full sum of twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars, being balance of account, a statement of which is hereto annexed as part hereof.

Petitioner further represents that said indebtedness arose on May 1st, '81, when petitioner sold to said Dreyfus his interest in
196 the partnership firm of Joseph Dreyfus and Co., composed of petitioner and said Dreyfus, for $35,637.50, to which is to be added items of profit and interest as set forth on said account; that petitioner has been paid on account of his claim various amounts, as shown on said statement, leaving the balance as aforesaid still due and unpaid, notwithstanding amicable demand.

Now, petitioner further represents that said Dreyfus has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, his property, rights, or credits or some part thereof with intent to defraud his creditors or give an unfair preference to some of them, and that he has converted or is about to convert his property into money or evidences of debt with intent to place it beyond the reach of his creditors, and that a writ of attachment is necessary to protect the rights of petitioner in the premises.

Wherefore he prays, the premises and the annexed bond and affidavit considered, that a writ of attachment do herein issue, directing the sheriff to seize and take into his possession all the property of said Dreyfus, wherever found, and to hold same subject to the further orders of this honorable court, and that said Dreyfus may be cited to appear and answer this petition, and that in due course of law there be judgment against him and in favor of petitioner for the said full sum of $23,184.37, with legal interest from October 24, '83, till paid, and with lien and privilege on the property to be herein attached, and that petitioner's claim be paid therefrom by
197 preference over and above all other creditors, and for costs and general relief.

(Signed) BRAUGHN, BUCK & DINKELSPIEL, *Att'ys.*

Affidavit.

C. Gumbel, being duly sworn, deposes and says that all and singular the allegations of the foregoing petition are true and correct.

(Signed) C. GUMBEL.

Sworn to before me this Oct. 27th, 1883.

(Signed) W. O. HART, *Not. Pub.* [SEAL.]

Bond. Filed October 27th, 1883.

Bond for writs of attachment and sequestration.

Know all men by these presents that we, C. Gumbel, as principal, and F. Gumbel, as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto James F. Clark, clerk of the civil district court for the parish of Orleans, and his successors in said office, in the sum of twenty-five thousand dollars, lawful money of the United States of America; for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

198

Sealed with our seals and dated this 27th day of October, 1883.

Whereas the said C. Gumbel has this day presented a petition to the civil district court for the parish of Orleans praying a writ of attachment to issue against property of said Dreyfus:

Now, the condition of the above obligation is that we, the above-bound principal and surety, will well and truly pay to the said clerk or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us in case it should be decided that the said writ was wrongfully obtained.

(Signed) C. GUMBEL. [SEAL.]
" F. GUMBEL. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) W. O. HART.

Statement Annexed to Petition. Filed October 27th, 1883.

199 DR. C. Gumbel in Ac. with Joseph Dreyfus. CR.

1882.			1881.		
Aug. 31	To B. P.	10,000 00	May 1	By balance	35,637 50
1883.			1882.		
Ap'l 30	" Gumbel and Meyer	5,704 58	May 31	" profit	3,870 45
"	" do., mdse. ac.	2,240 96	1883.		
Oct. 24	" do.	216 67	Oct'r 1	" interest	3,027 33
"	" do., mdse. ac.	1,188 70			
"	" balance	23,184 37			
			1883.		
		42,535 28	Oct'r 24	By balance	

Order.

Let a writ of attachment issue herein as prayed for on petitioner furnishing bond in the sum required by law.

N. O., Oct. 27, '83.

(Signed) F. A. MONROE, *Judge.*

Writ of Attachment. Issued 27th October, 1883.

Civil District Court, State of Louisiana.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662.

200 Civil District Court for the Parish of Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, Greeting:

Whereas due proof has been made before the civil district court for the parish of Orleans by Cornelius Gumbel that Joseph Dreyfus is justly indebted to him in the sum of twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars, with legal interest from October 24th, 1883, and that the said Joseph Dreyfus has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, his property, rights, or credits or some part thereof with intent to defraud, &c.:

Now, therefore, you are commanded, in the name of the State of Louisiana and of the civil district court for the parish of Orleans, to seize and attach according to law and to take into your possession the goods and chattels, lands and tenements, rights and moneys, effects and credits, of the said Joseph Dreyfus, if any you find in said parish, to the amount of what will suffice to discharge *to* said debt and costs of suit, and that you give notice of this proceeding by leaving a copy thereof at the last place of abode of the said defendant, if in said parish, and causing a copy thereof to be affixed at the door of the parish church of said parish, and to make return of this writ and endorse thereon the manner in which you have executed it before our court according to law.

Clerk's office, 27th day of October, 1883.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

201 *Citation. Issued October 27th*, 1883.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662, C'l D't C't.

To Mr. Joseph Dreyfus, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 27th day of October, in the year of our Lord 1883.

(Signed) JAMES D. RANKIN,
Deputy Clerk.

Sheriff's Return to Citation.

Received Oct. 30th, 1883, and on the 30th day of October, 1883, I served a copy of the within citation and accompany-
202 ing petition personally on Joseph Dreyfus, defendant herein.
Ret. same day.

(Signed) JNO. E. SIEKFORT, *D'y Sh'ff.*

Supplemental Petition and Interrogatories. Filed October 29th, 1883.

C. GUMBEL
vs.
Jos. DREYFUS. } No. 9662.

To the honorable the civil district court for the parish of Orleans:

The supplemental petition of C. Gumbel respectfully represents—

That he has obtained from the clerk of this honorable court a writ of attachment ordering the sheriff of this parish to seize and take into his possession the property, real and personal, rights, and credits of defendant, Jos. Dreyfus, and cause to be made in the manner prescribed by law an amount sufficient to pay and satisfy the same, viz., twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars; and having good reason to believe that J. R. G. Pitkin, marshal of the United States district and circuit court for the eastern district of Louisiana and fifth circuit, third person, is indebted unto said defendant or has property or effects in his possession
203 or under his control belonging to said defendant:

Therefore petitioner prays that said J. R. G. Pitkin, mar-

shal, &c., be made garnishee herein and ordered to answer under oath to accompanying interrogatories and, after all due and legal proceedings, condemned to pay the amount of said claim and costs.

(Signed) BRAUGHN, BUCK & DINKELSPEIL,
Attorneys for Petitioner.

Interrogatories to be Answered Categorically under Oath, in Writing, Ten Days from Service.

1st. Had you in your hands or under your control, directly or indirectly, at the time of the service of these interrogatories or at any time since, any money, rights, credits, or other property whatsoever belonging or due to the said defendant in attachment or in which he has or had any interest for the whole or for a part; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said claim, or, if less, to what amount, you being asked and required to make a full disclosure in relation to the same?

2nd interrogatory. Were you not, at the time of service upon you of these interrogatories or since, directly or indirectly indebted or obligated unto the said defendant in attachment for anything or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transaction
204 of any kind whatever, whether the same be due or to become due and whether the interests of said defendant in attachment be direct or indirect or be for the whole or a part only, or whether it be by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said claim and costs, or, if less, what amount, you being asked and required to make a full and detailed disclosure in relation to the same?

3rd interrogatory. Have you at any time since the service of notice of seizure in your hands herein made directly or indirectly unto or with the said defendant in attachment any payment or novation or compromise or arrangement or given him any note or written obligation or received from him, directly or indirectly, any receipt or acquittance? And, if yea, state the nature, description, and amount thereof and the time, place, and circumstances of the same.

(Signed) BRAUGHN, BUCK AND DINKELSPIEL, *Att'ys.*

Citation to Garnishee. Issued 29th October, 1883.

STATE OF LOUISIANA:

205 Civil District Court for the Parish of Orleans, in the City of New Orleans.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662.

NEW ORLEANS, ——, —.

To J. R. G. Pitkin, marshal of the U. S. district and circuit courts for the eastern district of Louisiana and fifth circuit, garnishee:

You are hereby cited to declare on oath what property belonging to the defendant in this case you have in your possession or in what sum you are indebted to said defendant, and also to answer, in writing, under oath, the interrogatories annexed to the supplemental petition, of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days from the service hereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable F. A. Monroe, judge of the said court, the 29th day of October, in the year of our Lord, 1883.

(Signed) JAMES D. RANKIN,
Deputy Clerk.

Sheriff's Return to Citation on Garnishee. Filed Oct. 30th, 1883.

Received October 29th, 1883, and on the same day, month,
206 and year, at 25 minutes past 12 a. m., served a copy of the within citation and accompanying original and supplemental petition and interrogatories on J. R. G. Pitkin, marshal of the U. S. district and circuit court for the eastern district of Louisiana and 5th circuit, made garnishee herein, in person.

Ret. same day.

(Signed) WM. J. GRADY, *D'y Sh'ff.*

Sheriff's Return to Writ of Attachment.

Received Oct. 27th, 1883, and on the 29th day of October, 1883, proceeded to execute this writ against the movable property of def'd't, described more fully in my notice of seizure, when I found the said property in possession of the U. S. marshal, and by instructions of pl't'ff's att'y placed my keepers on the sidewalk in front of said property, and kept them continually, both night and day, until Jan'y 25th, '84, when they were withdrawn by order of pl't'ff's att'y; also made general seizure by garnishment in the hands of J. R. G. Pit-

kin, marshal of the U. S. dis't court. From said general seizure nothing has as yet come into my possession or under my control, and this return is made up to date for the purpose of enabling the clerk of this hon. court to complete a transcript of appeal.

(S'g'd) WM. J. GRADY, *D'y Sheriff.*

207 *Notice of Seizure. Annexed to Sh'ff's Return to Writ.*

NEW ORLEANS, *October 27th*, 1883.

STATE OF LOUISIANA, CIVIL SHERIFF'S OFFICE,
Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662.

To Joseph Dreyfus, New Orleans:

Please to take notice that by virtue of a writ of attachment issued in the above-mentioned suit I have seized and taken in my possession all and singular the contents of the store number 33 Tchoupitoulas street.

(Signed) WM. J. GRADY, *D'y Sheriff.*

Sheriff's Return to Notice of Seizure.

And on October 29th, 1883, at 1 a. m., served a copy of the within notice of seizure on Joseph Dreyfus, defendant herein, in person.

(Signed) WM. J. GRADY, *D'y Sheriff.*

208 *Notice of Seizure on Garnishee. Annexed to Sh'f's Return to Writ.*

STATE OF LOUISIANA, CIVIL SHERIFF'S OFFICE,
Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662.

NEW ORLEANS, *Oct. 29th*, 1883.

To J. R. G. Pitkin, marshal of the U. S. circuit court for the fifth circuit and eastern district of Louisiana, N. O., garnishee:

Please to take notice that by virtue of a writ of attachment issued in the above-mentioned suit I seize in your hands all the goods, chattels, lands, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes or property of any kind which you may now or hereafter have in your possession or under your control be-

longing to the defendant, Joseph Dreyfus, which you will hand over to me.

(Signed.) WM. J. DRADY,
Deputy Sheriff.

Sh'ff's Return to Foregoing Notice, &c.

And on October 29th, 1883, at 25 minutes past 12 a. m., served a copy of the within notice of seizure on J. R. G. Pitkin, marshal of the circuit court of the eastern district of Louisiana, and the
209 district court, 5th circuit, in person.

(Signed.) WM. J. GRADY, *D'y Sh'ff.*

Exception of Pitkin, Marshal, &c. Filed November 7th, 1883.

Civil District Court, &c.

C. GUMBEL
vs.
Jos. DREYFUS. } No. 9662.

And now comes J. R. G. Pitkin, marshal of the United States, &c., cited herein as garnishee, and for exception says that in his said capacity this honorable court is without jurisdiction to make him garnishee herein.

Wherefore he prays that he be dispensed from answering the interrogatories served on him in his said capacity; that this exception be maintained and said garnishment proceedings dismissed, with his reasonable allowance for fees of attorney necessarily employed herein and for other costs. He prays also for all general relief.

(Signed.) CHAS. S. RICE, *Of Counsel.*

Order.

Let the exceptor be excused from answering the interrogatories accompanying garnishment proceedings herein, pending fore-
210 going exception.

New Orleans, La., November 7th, 1883.

(Signed.) W. T. HOUSTON, *Judge.*

Default.

Extract from the Minutes of Division "B," November 12th, 1883.

Present: Hon. W. T. Houston, judge.

Civil District Court.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662, Division "B."

On motion of Braughn, Buck and Dinkelspiel, of counsel for

plaintiff, and on showing to the court that, though duly cited herein, the defendant has failed to answer—

It is ordered by the court that judgment by default be entered against said defendant.

Motion to Dissolve. Filed Nov'r 13th, 1883.

Civil District Court.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662, Division "B."

211 Defendant moves for a rule on plaintiff to show cause, Friday, November 26th, 1883, why attachment herein should not be dissolved. Defendant moves to dissolve attachment herein made on following grounds:

1st. Because the affidavit for attachment is defective, insufficient, and not such as is required by law.

2nd. Because the allegations of plaintiff are too vague to authorize an order for issuance of writ of attachment.

3d. Because these allegations are false.

Wherefore defendant prays that attachments herein made be dissolved.

He avers the action of plaintiff in causing attachment was wrongful, and has damaged him in the sum of two-hundred and fifty dollars, special damages for counsel fees, and in the sum of five thousand dollars, general damages, for which sum he prays judgment *in solido* against plaintiff and their sureties on bond given for attachment. He prays that said rule be made returnable on a day fixed by court, and that plaintiff be notified.

(Signed) JOSEPH DREYFUS.

Judgment. Rendered Nov'r 16th, 1883.

Civil District Court, Parish of Orleans.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662.

212 On motion of Braughn, Buck and Dinkselpiel, of counsel for plaintiff, an on producing to the court due proof in support of plaintiff's demand, and the law and the evidence being in favor of the plaintiff—

It is ordered, adjudged, and decreed that there be judgment in favor of the plaintiff, Cornelius Gumbel, and against the defendant, Joseph Dreyfus, for the sum of twenty-three thousand one hundred and eighty-four dollars & $\frac{37}{100}$, with legal interest thereon from October 24th, 1883, until paid, with lien and privilege on the property

herein attached, and that plaintiff's claim be paid by preference over and above all other creditors, with costs of suit.

Judgment rendered on November 16th, 1883.

(Signed) W. T. HOUSTON, *Judge.*

Motion to Fix Exception. Filed Dec. 5th, 1883.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662, Division "B."

On motion of Braughn, Buck, and Dinkelspiel, att'ys for the pl't'ff, it is ordered by the court that the exception of J. R. G. Pitkin, garnishee herein, be fixed for trial on Friday, Dec. 14th, 1883, at 11 a. m., and counsel notified thereof.

Fieri Facias. Issued December 5th, 1884.

213 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662.

State of Louisiana to the sheriff of the parish of Orleans, greeting:

We command you that by seizure and sale of the property, real and personal, rights, and credits of defendant, Joseph Dreyfus, in the manner prescribed by law, you cause to be made the sum of twenty-three thousand one hundred and eighty-four dollars and $\frac{37}{100}$, with legal interest thereon from October 24th, 1883, until paid, with lien and privilege on the property herein attached, and that plaintiff's claim be paid by preference over and above all other creditors, and also the sum of thirty-nine $\frac{45}{100}$ dollars, costs, as well as your own costs and charges, to satisfy a judgment rendered against the said defendant, Joseph Dreyfus, in our civil district court for the parish of Orleans, on the 16th day of November, 1883, in favor of plaintiff, C. Gumbel, and how you shall have executed this writ you make return to our said court within seventy days, according to law.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of our said court, this 5th day of December, in the year of our Lord 1883.

(Signed) JNO. T. FITZGERALD,
Deputy Clerk.

214 *Sheriff's Return to Fieri Facias.*

Received Dec'r 5th, 1883, and levied this writ on the property already under seizure and notified defendant of my seizure, as will

more fully appear from reference to the notice of seizure, with the returns thereon, which are hereto annexed and made part, and on January 25th, 1884, said movable seizure was released by order of pl't'ff's att'y.

Notice of Seizure, Marked "A." Annexed to Sh'f's Return.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *December 5th*, 1883.

To Joseph Dreyfus:

Take notice that I have seized and in three days from the service hereof shall proceed to advertise and sell according to law all and singular the contents of the store No. 33 Tchoupitoulas street, in this city, to pay and satisfy the writ issued in this case, say the sum of $23,184.37 with interest and costs, unless the same is immediately paid.

(Signed) WM. J. GRADY,
Deputy Sheriff.

215 *Return on Reverse of Notice.*

And on December 6th, 1883, I served a copy of the within notice of seizure personally on Joseph Dreyfus, defendant herein.

(Signed) J. E. SICKFORT,
Deputy Sheriff.

And the delay within which this writ is made returnable by law having expired, I make this my return, still maintaining my seizures herein made in full force and effect.

And at the time of returning this writ I requested the clerk of this honorable court to furnish me with a copy of the same, together with all my proceedings thereon endorsed according to law.

No other property found after due demand made of plaintiff's attorneys and defendant herein.

Costs and charges herein still due.

Sheriff's fee for this writ, $2.00.

Returned February 12th, 1884.

(Signed) ERNEST RICKER,
Deputy Sheriff.

Rule on J. R. G. Pitkin for Contempt. Filed December 6th, 1883.

216 Extract from the Minutes of Division "B," Dec. 6th, 1883.

Present: Hon. W. T. Houston, judge.

Civil D't C't.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662, Division B.

On motion of Braughn, Buck and Dinkelspiel, attorneys for the plaintiff, and on suggesting to the court that a writ of attachment was herein issued on October 27th, 1883, and on October 29th, 1883, executed by the sheriff of this parish by service upon the defendant and by seizure of his stock of goods contained in the store No. 33 Tchoupitoulas street; that said stock has been in the custody of said sheriff, through his duly appointed keeper, since said date; that on December 5th, '83, the judgment previously obtained by mover against the defendant, with lien and privilege upon the property attached, having a writ of *fieri facias*, issued and was executed by said sheriff by an additional seizure on said stock of goods;

On further suggesting that one J. R. G. Pitkin, of this city, is obstructing the sheriff in his peaceable possession of said property and interferes with his control thereof—

It is ordered by the court that said Pitkin do show cause on the 14th day of December, 1883, at 11 a. m., why he should not desist from interference with the sheriff in the custody of said property or be punished for contempt of this honorable court in obstructing the execution of its orders and judgments.

217 *Sheriff's Return to Rule for Contempt.*

Received Dec. 10th, 1883, and on the same day, month, and year I served a copy of the within rule personally on J. R. G. Pitkin, herein named.

Ret. same day.

(S'g'd) P. A. McINTYRE,
D'p'y Sheriff.

Rule on J. R. G. Pitkin, Marshal, etc., et als. Filed December 17th, 1883.

C. GUMBEL
vs.
Jos. DREYFUS. } No. 9662, Division "B."

On motion of Braughn, Buck and Dinkelspiel, attorneys for plaintiff, and on suggesting to the court that a writ of attachment,

issued herein on the 27th of October, 1883, was executed by seizure of the property of the defendant, especially of contents, fixtures, stock of goods and merchandize, &c., contained in store No. 33 Tchoupitoulas street, which seizure was effected on October 29th, 1883.

That subsequently in due course of proceeding a judgment was rendered in favor of mover against the defendant, maintain-
218 ing the attachment, with privilege and right of preference on the property attached.

That on the fifth day of December, 1883, said judgment having become final, a writ of *fi. fa.* was issued and the sheriff of this court directed to again seize the property seized and held under the seizure made on the writ of attachment to satisfy said judgment, and the said sheriff did again under said writ of *fi. fa.* seize said property.

That he has ever since the execution of the said writ of attachment held same under the seizure then made, and latterly under both it and the seizure made in execution of the writ of *fi. fa.*

Mover further suggests that the sheriff of this honorable court is about to further execute said writs of *fi. fa.* by the sale of the property seized, but is obstructed therein by various reasons: Deputy marshals of the circuit court of the United States in and for the fifth circuit and eastern district of Louisiana and by the marshal of said court, J. R. G. Pitkin, who claim and pretend to hold said property and refuse said sheriff the full and free control, possession, and disposal thereof, under his writs, under and by virtue of a seizure or seizures made or pretended to have been made by him or them, said marshal and deputy marshals, in the execution of said writs of attachment issued from said circuit court at the instance of the following-named parties, to wit:

Krebs and Speis, T. Altschul & Co., B. Dreyfus & Co., Maddux, Hobart and Co., William Adler, Corning and Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., C. Anduran & Co., Lachman
219 and Jacobi, A. Gunther and Co., Edmond Dubois, Fairbanks and Duenwig, Freiburg and Workum, D. M. Stadleker & Co., L. Bamberger & Co., John Osborn, Son & Co., Arpad, Haraszthy & Co., H. A. Batjer & Co., S. Jacobi & Co., Stege and Reuling, and Hoffheimer Bros.

And on further suggesting that at the time of the issuance of said alleged writs of attachment from the said circuit court the property upon which said marshal and deputies levied or attempted to levy and seize was already, under the seizure made by the sheriff as hereinabove set forth, in the custody of said sheriff, as hereinabove set forth, in the custody of said sheriff and the jurisdiction of this court, and no seizure thereof could be made in the manner attempted by the United States marshal.

And further suggesting, even if such seizure could be made and was made, that same was subsequent in point of time and execution to the seizure effected by the sheriff of this honorable court, and that to this court as first vested with jurisdiction over the property seized appertains the duty and power to regulate the effect of said

and all subsequent seizures and distribute proceeds of the property when sold; further suggesting that the defendant has suspended business, is actually insolvent, and the property seized is insufficient in value and amount to pay and satisfy all writs issued against said defendant and his property; that at the same time with the writs herein and before any seizure of the said marshal was made or attempted under said writs from said circuit court seizures under attachments issued from this court were made in the suits of
220 S. Gumbel & Co. *vs.* Joseph Dreyfus, No. 9663, and Simon and Loeb *vs.* Jos. Dreyfus, No. 9664, of the docket hereof, and said property seized is insufficient to satisfy these writs:

It is ordered that J. R. G. Pitkin, marshal of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, and Krebs and Speis, T. Altschul & Co., B. Dreyfus & Co., Maddux, Hobart & Co., William Adler, Corning and Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., J. Anduran & Co., Lachman and Jacobi, A. Gunther and Co., Edmond Dubois, Fairbanks and Duenwig, Freiburg and Workum, Isaac Hays, D. M. Stadeker and Co., L. Bamberger and Co., John Osborn, Son and Co., Arpad, Haraszthy & Co., H. A. Batjer & Co., S. Jacoby & Co., Stege and Reuling, and Hoffheimer Bros., said attaching creditors, do show cause on Friday, the 21st of December, 1883, at 11 o'clock a. m., why the property seized under the attachment issued in this cause and the suits of S. Gumbel & Co. *vs.* Jos. Dreyfus, No. 9663, and Simon and Loeb *vs.* Jos. Dreyfus, No. 9664, civil district court, should not be sold (or a sufficient amount thereof to satisfy said writs), the rank of the attaching creditors determined, and the proceeds of sale distributed accordingly; and it is further ordered that S. Gumbel & Co., Simon and Loeb, A. Lehman and Co., Bassetti and Xiques, and E. H. Gato, attaching creditors in this court, be notified and made parties hereto.

Endorsement on reverse of foregoing rule on Pitkin, &c:

Service accepted Dec. 17th, 1883.
221 (Signed) Ernest T. Florance,
Att'y for Krebs and Speis.
Att'y for Maddux, Hobart & Co.
" " T. Altschul & Co.
" " B. Dreyfus & Co.
" " L. Bamberger & Co.
" " D. W. Stadeker & Co.
" " E. H. Gato.
(Signed) Leovy and Kruttschnitt, att'ys for Bassetti and Xiques.
(Signed) Geo. H. Theard, att'y for Osborn, Son & Co.
(Signed) John M. Bonner, for Elias, Block & Son.
(Signed) Merrick, Foster and Merrick, for Stege & Reuling.
(Signed) Joseph P. Hornor and F. W. Baker, for H. A. Batjer & Co., A. Gunther & Co., Lachman and Jacobi, J. Anduran & Co.
(Signed) D. C. and L. L. Labatt, att'ys for S. Jacobi & Co., H. Weiller & Co.
(S'g'd) A. Lehman and Co., for Dufour.

(S'g'd) Chas. S. Rice, att'y for Corning & Co. and Freiburg & Workum.

222 (Signed) T. Gilmore and Sons, for W. Adler and C. Lazard.

(Signed) A. B. Philips, att'y for E. Dubois and Fairbanks & Duenwig.

(Signed) Huntington & Dufour, att'ys-at-law.

(Signed) Braughn, Buck and Dinkelspiel, for S. Gumbel & Co. and Simon and Loeb.

Sheriff's Return to Rule, &c.

Received December 17th, 1883, and on Dec. 17th, '83, I served a copy of the within rule on J. R. G. Pitkin, marshal, &c., in person.

Ret. same day.

(Signed) P. A. McINTYRE,
D'p'y Sh'ff.

And on December 17th, 1883, I served a copy of the within rule on Hoffheimer Bros., through George Denegre, one of their attorneys, in person.

Ret. same day.

(Signed) P. A. McINTYRE,
Deputy Sheriff.

Exception to Jurisdiction. Filed January 4th, 1884.

223 Civil District Court for the Division B.

S. GUMBEL & CO.
vs.
JOSEPH DREYFUS.

Now into court, through undersigned counsel, — the firm of Stege and Reiling, made defendants herein on the rule taken by S. Gumbel & Co. to show cause why the property of Joseph Dreyfus, and especially the contents, fixtures, stock of goods, merchandise, &c., contained in store No. 33 Tchoupitoulas street and pretended and alleged by said S. Gumbel & Co. to have been seized through the civil sheriff on 29th October, 1883, and to have been executed and levied upon under a writ of *fieri facias* by said officer on 4th day of December, 1883, should not be sold and the rank of attaching creditors determined and the proceeds of sale distributed.

And, without answering said rule, excepts to the jurisdiction of this honorable court and holds that it is incompetent to either sell the property or determine the rank of the attaching creditors or distribute the proceeds of said property for the reason that the said property was in the hands of the U. S. marshal, under attachment issuing by order of the judge of the circuit court of the United States for the eastern circuit of La., at the time of said pretended seizure by the civil sheriff.

(Signed) MERRICK, FOSTER & MERRICK.

Rule and Exception Continued Indefinitely.

Extract from the Minutes of Div. B.

224 FRIDAY, *January 14th*, 1884.

Present: Hon. W. T. Houston, judge.

C'l D't C't, Parish of Orleans.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662.

The rule and exception herein fixed for this day was, by consent of counsel, ordered to be continued indefinitely.

Judgment.

Civil D't C't.

S. GUMBEL AND CO.
vs.
JOSEPH DREYFUS. } No. 9663, Division "C."

On motion of W. O. Hart, Esq., attorney for plaintiff, and on producing due proof of their demand and the law and the evidence being in their favor—

It is ordered, adjudged, and decreed that the judgment by default herein entered on the 10th instant be now confirmed and made final, and accordingly that there be judgment in favor of plaintiffs, S. Gumbel & Co., and against defendant, Joseph Dreyfus, for the full sum of two thousand dollars, with eight per cent. per annum interest thereon, from judicial demand, until paid, and costs of suit, together with lien and privilege on the property attached.

225 Judgment rendered November 14th, 1883.
Judgment signed November 19th, 1883.
(Signed) F. A. MONROE, *Judge.*

Judgment.

Civil Dist. C't.

SIMON AND LOEB
vs.
JOSEPH DREYFUS. } No. 9664, Division A.

On motion of Max Dinkelspiel, Esq., att'y for plaintiffs, and on producing due proof in support of said plaintiffs' demand, the law and the evidence being in favor of said plaintiffs—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiffs, Simon and Loeb, and against defendant, Joseph

Dreyfus, for the sum of eighty-eight hundred and seventy-seven $\frac{45}{100}$ dollars, with legal interest from September 6th, 1883, until paid, with lien and privilege on the property attached herein, and preference over and above all other creditors, costs herein to be paid by defendant.

Judgment rendered November 16th, 1883.

Judgment signed November 21st, 1883.

(S'g'd) A. L. TISSOT, *Judge.*

226 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify the foregoing forty (40) pages to contain true and correct copies of the petition, affidavit, bond, statement and order for attachment, writ of attachment and sheriff's return thereon, citation to defendant and sh'ff's return thereon, supplemental petition and interrogatories and citation, with sheriff's return thereon, exception of J. R. G. Pitkin, and order, default, motion to dissolve, judgment, motion to fix, exception, *fieri facias* and sheriff's returns thereon, rule on J. R. G. Pitkin for contempt and sheriff's return thereon, rule on J. R. G. Pitkin, marshal, &c., and return thereon, exceptions to jurisdiction and rule, and exception continued indefinitely had in the cause entitled C. Gumbel *vs.* Joseph Dreyfus, No. 9662 of the docket of the civil district court for the parish of Orleans, and also a true copy of the judgment rendered in the cause entitled S. Gumbel & Co. *vs.* Joseph Dreyfus, No. 9663 of the docket of the civil district court for the parish of Orleans, and the judgment rendered in the cause entitled Simon and Leob *vs.* Joseph Dreyfus, No. 9664 of the docket of the civil district court for the parish of Orleans.

In testimony whereof I hereunto set my hand and affix the impress of the seal of this hon. court, at New Orleans, La., on this 11th day of March, in the year of our Lord one thousand
227 eight hundred and eighty-four, and in the 108th of the Independence of the United States.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

228 *Testimony of Joe Morris.*

Sworn and examined on behalf of plaintiffs.

By Mr. PHILLIPS:

Q. You reside here in the city, sir?
A. I do.
Q. What kind of business do you follow?
A. Private watchman.
Q. At whose place?

A. On Decatur street between Custom-House and Bienville. Mr. Dubois, Mr. Walshe, and numerous stores I have now.

Q. Did you see any goods coming down here on Saturday night?

Counsel for defendant and intervenor objects to the question as being leading.

A. I did.

Q. Do you recollect the date of the month?

A. No, sir.

Q. You know where these goods went to?

A. No, sir.

Q. You know where these goods went to?

A. In the store.

Q. What store?

A. Meyer Weil's.

Q. Did they come in by the front or back way?

A. Through Clinton street and Decatur street.

Q. Both ways?

A. Both ways.

Q. You know the number of floats that came there?

229 A. No, sir.

Q. Do you know what time of night it was they came there?

A. My judgment is about one o'clock.

Q. One o'clock at night?

A. Sunday morning.

Q. Did you see any goods arrive there Saturday night?

Counsel for defendant and intervenor objects to the question as being leading.

A. No, sir.

Q. Did you see any officers following these floats that you speak of that night?

Counsel for defendant and intervenor objects to the question as being leading.

A. No, sir.

Q. You know what these floats had on?

A. Goods on them.

Q. Just state. I cannot speak everything.

A. Barrels, boxes, and baskets.

Q. General merchandize?

A. Yes, sir.

Q. Do you know Mr. Meyer?

A. Meyer Weil?

Q. Yes, sir.

A. Yes, sir. I have been watching for him.

Q. Did you see Meyer Weil any time that evening or morning at and, two, or three o'clock?

A. I didn't in the evening at one o'clock.

230 Q. You saw him that evening?

A. Yes, sir.
Q. What evening is that you speak of?
A. Saturday evening.
Q. Did he say anything to you Saturday evening?
A. Told me there was some goods coming in the store between twelve o'clock and daylight; told me that he or his son would be — to open the doors for the goods to come in the store.
Q. Did you have any conversation with him at one o'clock?
A. No, sir.
Q. Did you see him there at one o'clock?
A. I seen him in the office writing.
Q. At one o'clock in the morning?
A. Yes, sir.
Q. Did you see any one in there with him at one o'clock?
A. No, sir; there was no one in the office but himself?
Q. You say that's the time the goods arrived, between twelve and one o'clock?
A. About that time—about one o'clock—I was walking the beat; according to my judgment it must have been about one o'clock.
Q. You know what month it was in that you speak of here?
A. No; I don't remember; I didn't pay attention to the month; don't recollect that.
Q. What conversation did you have with Meyer Weil in regard to these goods that were coming?
A. He told me that he or his son would be there after twelve (12) o'clock; that there were some goods coming in the store be-
231 tween twelve o'clock and daylight; he wasn't positive what time.
Q. What else did he say?
A. That's all he said. I told him it was all right.

Counsel for defendant and intervenor objects to this testimony as being a conversation out of the presence of Mr. Ermann or any other person interested in this case.

Q. You stated in your testimony once before that Meyer Weil told you goods were coming in the store; that you were not to pay any attention to these goods.

Counsel for defendant and intervenor objects to the question as leading and as being suggestive.

Q. I want to refresh your memory. Had you had any conversation outside of what you have already given?
A. Meyer Weil told me he would be there, he or his son; that there would be some goods coming in the store between twelve o'clock and daylight; he wasn't positive, but that was none of my business. I told him it was not as long as he was in the store; that's what I told him. I didn't know where the goods were coming from or who they belonged to.
Q. Did you or not make reply you didn't care how much goods came in, but that none should go out?
A. No, sir; I told him it was none of my business what goods

would come in or go out as long as he was there or his son; all I was employed there — was to watch the store.

Q. Do you know the number of drays or floats that came there?

A. No, sir; I do not.

Q. Can you give us about how many?

232 A. Well, I didn't stop there to look. There was about three, I believe, I seen in the front—on Decatur street—and about the same amount on Clinton street I seen when making my round. I never stopped.

Q. Was Meyer Weil there in the store all the time while the drays and floats were there?

A. Yes, sir.

Q. Did you see Meyer Weil on Saturday night there?

A. I did, sir.

Q. What time?

A. Must have been about seven or half past seven o'clock.

Q. How late did he remain?

A. Until about nine o'clock.

Q. See any goods come there Saturday night?

A. No, sir.

Q. You say he stayed there until nine o'clock?

A. About nine; half past eight or nine.

Q. Then came back at one o'clock?

A. A little after twelve. It was one o'clock I saw the floats.

Q. That's the time you saw the floats or drays on both sides—at the back and at the front?

A. Yes, sir.

Cross-examination by Mr. BROWNE:

Q. Are you sure there were more than three floats altogether? The testimony of all the other witnesses is they had about three floats altogether.

A. There were more than that on both sides of the street. I was making my round. I didn't count them. I seen floats un-

233 loading on Decatur street and some on Clinton street.

Q. Are you positive there were more than three?

A. Yes, sir.

Q. How many are you positive there were—more than three?

A. I couldn't tell.

Q. Are you positive there were four?

A. Oh, yes, sir.

Q. Are you positive that there were five?

A. Well, no, sir; I could not swear to that.

Q. Who was present when Mr. Weil had this conversation with you?

A. Nobody. I was making my round when he called me in; said he told me that so I would know it was him in the store.

Q. Where did this conversation occur with him?

A. Right in the store.

Q. What time?

A. About seven or half past seven o'clock.

Q. What night?
A. Saturday night.
Q. That's all the conversation you had with him?
A. Yes, sir.
Q. You had nothing more with him?
A. No, sir.

Counsel for defendant and intervenor waives any further cross-examination of this witness, reserving, however, all legal exceptions to his testimony except as to manner and time of taking.

234 *The Records in the Case of H. Weiller & Co. vs. Jos. Dreyfus & H. Weiller & Co. vs. Jos. Dreyfus, No.* 10371.

Petition for sequestration. Filed Oct. 29, 1883.

To the honorable the judges of the circuit court of the United States for the 5th circuit and eastern district of Louisiana:

The petition of H. Weiller & Co., a commercial firm composed of Herrmann Weiller and Henry Fernberger, both citizens of the State of Pennsylvania and residents of Philadelphia, with respect represents—

That Joseph Dreyfus, a citizen of Louisiana and resident of New Orleans, is justly and truly indebted unto pet'r in the sum of twenty-six hundred and forty-six $\frac{95}{100}$—, with 5% int. from judicial demand until paid, for this, to wit:

That pet'r is owner and holder of a certain promissory note, dated New Orleans, Sept. 1st, 1883, for $2,646.95, at 4 months after date, to pet'r's order, for value received. Now, pet'r alleges that although said note is not due def't has failed and his store and its contents have been seized by numerous creditors in this hon'ble court, and pet'r fears and has good cause to fear that def't will part with, conceal, or dispose of the property, goods, and merchandize sold to him by pet'r in order to defraud him during the pendency
235 of the suit.

Pet'r alleges that among his stock still in store there remains a part of the whiskey sold by pet'r in their original packages and with identical marks, and that they can identify and point them out, and pet'r desires they should be sequestered and sold separate and apart in order to preserve his lien and privilege as vendor according to the law of Louisiana.

Wherefore, the premises, affidavit, and bond considered, pet'r prays for a writ of sequestration ordering the marshal to seize, set apart, sell, and keep the proceeds separate, subject to the order of court; that said Joseph Dreyfus be cited to appear and answer, and after due proceedings had pet'r have judgment for $2,646.95, with 5% int. from judicial demand till paid; that the sequestration be maintained, with lien and privilege on the proceeds of the property, goods, and effects so identified, to be paid by preference over and above all other creditors, and for costs and for general and equitable relief.

(Signed) D. C. & L. L. LABATT.

transfer thereon, which bond was signed by A. Ermann as principal and Meyer Weill as surety in the sum stipulated therein, and which bond was duly returned into this hon. court on the 7th Nov'b'r, 1883. Ret'd Nov'b'r 15, 1883.

(Signed) E. S. WURZBURGER,
D'y Marshal.

Notice of Seizure.

U. S. Circuit Court, Eastern District of Louisiana.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

To Joseph Dreyfus, Meyer Weill & Co., 34 Decatur St.:

You are hereby notified that by virtue of a writ of sequestration, issued out of the above-named court in the above entitled and numbered suit and to me directed, I have this day seized and taken into my possession the following-described property to pay and satisfy the said writ, amounting to the sum of $— or thereabouts:

Description of property.

Ten barrels of whiskey, numbered as follows, to wit:

754862, 761405, 761404, 761401, 761402,
754863, 755308, 761403, 755306, 754866,

241 now in the premises No. 34 Decature street, city of New Orleans, occupied by Mayer Weill & Co., New Orleans.
Oct. 29th, 1883.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Return.

On Oct. 29th, 1883, I served a copy of the within notice of seizure on Joseph Dreyfus, defendant, by handing the same to him in person in the city of New Orleans.

(Signed) DAN. A. ROSS,
D'y U. S. Marshal.

On Oct. 29th, 1883, I served a copy of the within notice of seizure on Meyer Weill & Co. by handing the same to Meyer Weill, of said firm, in person, in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation Issued to Joseph Dreyfus.

UNITED STATES OF AMERICA,
Eastern District of Louisiana,

242 Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

The President of the United States of America to Joseph Dreyfus:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city [SEAL.] of New Orleans, this 29th day of October, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste: (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

243 Received Nov. 1, 1883, by the U. S. marshal, and on the 2d day of November, 1883, I served a true copy of the within citation and accompanying plaintiff's petition on the defendant, Joseph Dreyfus, by handing the same to him in person in the city of New Orleans.

(Signed) J. R. G. PITKIN,
U. S. Marshal, E. D. of La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

Returned same day.

Motion and Order to Release.

Extract from the Minute Book, November Term, 1883.

NEW ORLEANS, TUESDAY, *November 6th*, 1883.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

On motion of Singleton, Browne & Choate, attorneys for Abraham Ermann, intervenor and 3rd opponent in each and all of the above-entitled cases, and upon suggesting to the court that,
244 as pledgee of the property sequestered by the marshal and nov. in his custody,— is entitled to have the property sequestered in each case delivered to him and the writ of sequestration released upon movers giving bond in each case for the value of the property sequestered, and that an appraisement of the property sequestered in each case is necessary in order to ascertain the amount of the bonds to be given—

It is ordered that the movers herein be allowed to bond the property sequestered in each of the causes Nos. 10380, 10367, 10378, 10371, and 10374 of the docket of this court upon executing and delivering to the marshal in each cause a bond, with good and solvent surety, conditioned according to law, in the respective sums, the value of the property sequestered in each case as shall be found to be the value thereof by the appraisers to be appointed.

And it is further ordered that K. Loew and J. A. Charbonnet be appointed and sworn appraisers in said causes to appraise the property sequestered in each cause.

Petition of Intervention and 3rd Opposition of A. Ermann. Filed Nov. 6th, 1883.

U. S. Circuit Court for the Eastern District of Louisiana.

H. WEILER & Co.
vs.
J. DREYFUS. } No. 10371.

245 To the hon. the judges of the circuit court of the United States for the eastern district of Louisiana:

The petition of intervention and third opposition of Abraham Ermann, who resides in Morgan City, Louisiana, respectfully shows—

That in the above entitled and numbered suit the United States marshal of this district, under and by virtue of a writ of sequestration, has sequestered and taken into his possession, in the warehouse of one Meyer Weil, the following-described property as belonging to the defendant, to wit, ten barrels of whiskey, marked ——.

Now, your intervenor and third opponent shows that on the 29th day of October, 1883, your petitioner advanced to one L. Meyer the sum of fifteen thousand dollars, in evidence where- the said Meyer executed, signed, and delivered his three promissory notes, each being dated October 29, 1883, for the sum of five thousand dollars each, and payable respectively 40, 60, and 75 days after date, with eight per cent. interest from maturity; and to secure the payment of said notes, principal and interest, the said Meyer did, by a clause in each of said notes and the endorsement of certain warehouse receipts, five in number, and delivery of the same to your petitioner, pledged the said ten barrels of whiskey, with a quantity of other goods and merchandize, to your intervenor and third opponent; which said notes and warehouse receipts are herewith filed, marked A, B, C, D, E, F, G, H respectively, and made part hereof.

246 Your intervenor and third opponent alleges and shows that said advances and pledge of said warehouse receipts to secure the payment thereof, together with the notes evidencing the same, were made in good faith and prior to the seizure herein, and that under the law he is entitled to have the said ten barrels of whiskey delivered to him upon executing a legal bond therefor.

Wherefore your petitioner prays leave to file this his intervention and third opposition herein; that the plaintiff, defendant, and marshal be cited, and that after due proceedings he be declared to be the lawful pledgee of said ten barrels of whiskey, and that a decree be entered in his favor that said whiskey be delivered to him as such; that the sequestration herein be dissolved at plaintiff's cost, and with all such damages for attorneys' fees and illegal detention as your intervenor and third opponent may have suffered by the wrongful issuance and execution of said writ; and your petitioner prays for all such further order and decree as may in the premises be granted and this court is competent to give *in*, and for general relief.

SINGLETON, BROWNE & CHOATE,
Att'ys for A. Ermann.

Order.

Let the forgoing petition of intervention and third opposition be filed as prayed for.
Nov. 6, '83.

EDWARD C. BILLINGS, *Judge.*

Service hereof accepted. New Orleans, Nov'r 7, 1883.

J. R. G. PITKIN,
U. S. Marshal,
By ED'N S. WURZBURGER,
D'y U. S. Marshal.

247 *Citation, Dated November 6th*, 1883.

H. WEILER & Co.
vs.
J. DREYFUS.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

H. WEILER & Co.
vs.
J. DREYFUS. } No. 10371.

The President of the United States of America to H. Weiler & Co.:

You are hereby summoned to comply with the demand contained in the petition of intervention and 3d opposition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 6th day of November, A. D. one thousand eight
248 hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste:

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Nov. 7, 1883, by the U. S. marshal, and on Nov. 7th, 1883, I served a true copy of the within citation and the accompanying petition of intervention and 3rd opposition on H. Weiler & Co., plaintiffs herein, by handing the same to D. C. Labatt, Esq., in person and leaving the same in his hands, the attorney for the aforesaid pl'tiffs, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, East. D'st. of La.
By DAN. A. ROSE,
D'y U. S. Marshal.

Citation, Dated November 6th, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

H. WEILER & Co.
vs.
J. DREYFUS. } No. 10371.

The President of the United States of America to J. Dreyfus:

You are hereby summoned to comply with the demand
249 contained in the petition of intervention and 3rd opposition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this sixth day of November, A. D. one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

Teste:

[SEAL.] F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received Nov. 7, 1883, by the U. S. marshal, and on Nov. 7th, 1883, I served a true copy of the within citation and accompanying petition of intervention and 3rd opposition on Joseph Dreyfus, defendant, by handing the same to him in person and leaving the same in his hands in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By DAN. A. ROSE,
D'y U. S. Marshal.

250 *Appraisement. Filed Nov. 7, '83.*

U. S. Circuit Court, East. Dist. of La.

H. WEILER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

To the hon. the judges of said court:

The undersigned, duly appointed by the hon. court to appraise

certain goods claimed by A. Ermann, intervenor, as pledgee, and which had been seized in above suit, respectfully report that they repaired to the warehouse, No. 34 Decatur St.. of Meyer Weil & Co., where they found in said marshal's custody, in apparent good condition, the goods hereafter described, which, upon an inspection of the invoice prices submitted to them, they value as follows:

3	bbls.	Imp. Cabinet whiskey, 142 gall.	327	75
5	"	private stock B, 240 "	624	
2		private stock A, 94.2 "	264	60
10			1,216	35

Nov. 7, '83.
(Signed) K. LOEW.
(Signed) J. A. CHARBONNET.

251 *Intervenor's Forthcoming Bond. Filed Nov'r* 7, 1883.

Know all men by these presents that we, Abraham Ermann, as principal, and Meyer Weil, as surety, are held and firmly bound, jointly and severally, unto J. R. G. Pitkin, United States marshal for the eastern district of Louisiana, in the sum of $1,216.35 (twelve hundred and sixteen $\frac{35}{100}$ dollars), lawful money of the United States of America, to be paid to the said J. R. G. Pitkin, U. S. marshal, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the seventh (7) day of Nov'b'r, in the year of our Lord eighteen hundred and eighty-three.

Whereas, in and by virtue of a writ of sequestration issued out of the honorable the United States circuit court for the sixth circuit and eastern district of Louisiana, holding sessions in the city of New Orleans, at the suit of H. Weiller & Co. *vs.* Joseph Dreyfus, and numbered 10371 on the docket of said court, and which suit is now pending therein, the following-described property, to wit:

3 barrels Imperial Cabinet whiskey, 142 gallons; 5 barrels private stock B, 240 gallons; 2 barrels private stock A, 94½ gallons, has been seized, taken into custody of the said U. S. marshal, and detained according to law, but the same has been released and delivered to the said intervenor upon the appearance of the said intervenor in the said suit and delivery to the said J. R. G. Pitkin, U. S.
252 marshal — the present obligation, which has been executed in pursuance of an order of said circuit court issued on the 6th day of Nov'b'r, 1883:

Now, the condition of the above obligation is such that if the said intervenor, A. Ermann, shall not send the above-described property out of the jurisdiction of the court, that he will not make an improper use of it, and that he will faithfully present the same in case he should be decreed to restore the same to the said U. S. marshal, or

shall satisfy such judgment as may be rendered in the suit pending as above mentioned, then this obligation to be void, or else to remain in full force.

(Signed) ABRAHAM ERMANN. [L. S.]
(Signed) MEYER WEILL. [L. S.]
—— ——. [L. S.]
—— ——. [L. S.]

Witness:
ED'N S. WURZBURGER.

Marshal's Transfer of Intervenor's Forthcoming Bond.

U. S. MARSHAL'S OFFICE,
EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS, *Nov'b'r* 7, 1883.

I do hereby transfer, assign, and set over to H. Weiller & Co., plaintiffs, and Joseph Dreyfus, defendant, in the within-mentioned suit, and to any or all other parties claiming to have or having as may be decided by final judgment of court, all my right,
253 title, and interest in and to the within bond.

(Signed) J. R. G. PITKIN, *U. S. Marshal,*
By ED'N S. WURZBURGER,
D'y U. S. Marshal.

Copy of Appraisement Attached to Intervenor's Forthcoming Bond Filed Nov'r 7, 1883. *See Page — of This —.*

Motion to set aside order allowing Ermann to bond.

Extract from Minutes, November Term.

NEW ORLEANS, WEDNESDAY, *November 7th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

254 On motion of D. C. & L. L. Labatt, attorneys for plaintiffs, and on suggesting to the court that the rule to bond given to A. Ermann, intervenor, was inadvertently granted, and that ten days had not elapsed to authorize said order, and should be rescinded and revoked—

It is ordered that A. Ermann show cause on the 9th day of November, 1883, at 11 o'clock a. m., why said order should not be annulled, and in the meantime let the order herein granted giving permission to bond be suspended.

Motion to Set Aside Order of Nov. 7th Submitted.

Extract from Minutes, November Term.

NEW ORLEANS, MONDAY, *November* 12*th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

The rule in above cases to rescind the order to release certain goods sequestered herein to A. Ermann, 3d opponent, pledgee, as continued from the 9th instant, came on this day to be further heard, when it was then and there agreed by counsel for 3d opponent that the rule in case No. 10374, returnable this day, be taken up and heard at the same time.

And after hearing further evidence and the arguments of counsel for the parties, respectively, the court took time to consider.

255 *Answer. Filed Nov.* 13, 1883.

In the U. S. Circuit Court, 5th C't & Eastern District of La.

H. WEILLER & Co.
vs.
JOS. DREYFUS; A. ERMANN, Interv'r. } No. 10371.

Now come pl't'ffs and, for answer to the intervention and 3rd opposition of A. Ermann, *and for answer* plead a general and special denial to each and every allegation, except so far as herein admitted.

Resp'd'ts admit that as creditors of Joseph Dreyfus they instituted suit and sequestered certain goods on which they claim the vendors' lien and privilege, and that same were seized by the marshal under the following circumstances: That early on Sunday morning, the 28th Oct., 1883, the citizens of New Orleans generally and the creditors of Joseph Dreyfus were informed that during the night-time, soon after 12 o'clock, of the 27th said Dreyfus was fraudulently and clandestinely moving his stock of goods from his store on Tchopitoulas to a store on Decatur St., in New Orleans, occupied by Meyer Weil and David Levy as a hardware store, and that he was aided and assisted by one Lehman Meyer, of New Orleans, the alleged pledgor of intervenor and 3rd opponent; that while in the act and after several float-loads of goods had been driven off and unloaded at 34 Decatur St. said Dreyfus was arrested in further removing the balance of his stock until certain creditors obtained writs of
256 attachment from this honorable court early on Sunday, the 28th October, and the marshal took and held possession and placed said store and contents under seizure; that soon after the

writs of attachment and garnishment were taken out by pl't'ffs and Meyer Weill and David Levy were made garnishees and duly served; that under the writ of sequestration respo'ts identified, by marks and numbers, ten bbls. of their whiskey which had been thus fraudulently removed by Dreyfus in the dead of night, all which will more fully appear by the records and returns of the marshal hereto annexed and made part hereof.

Now respo't denies that the ownership or possession ever legally passed to said Lehman Meyer, and the attempted delivery was simulated, collusive, and fraudulent, and that said Meyer was aiding and assisting said Dreyfus to commit a vile fraud.

That it was pursuant to a scheme to screen and conceal the property from pursuit by the just creditors of Dreyfus, and said Lehman Meyer's title to possession, through whom int'r claims, was a sham and simulation; that it is false and fraudulent to claim that Meyer Weill & Co. keep a public warehouse to receive goods on storage, or that Meyer Weill or David Levy knew at the time that these goods were received in said store; that, on the contrary, the truth is that Lehman Meyer obtained possession of the key from Weill in the dead of night and without stating his object to said Weill & Co., as averred by Weill & Co.; further say that said Meyer and Ermann well knew all these facts before and at the time of the pretended loan of $15,000, and that it is untrue that intervenor holds any valid act
257 of pledge on said whiskey as enacted by the laws of Louisiana.

Respo'd'ts deny further that there was any delivery of said whiskey by Dreyfus, actual or constructive, consistent with common honesty and fair dealing between vendors, capitalists, and merchants, and that it must be an open, undisputed, quiet possession to have effect against third parties & be untainted with fraud and complicity in its removal at unusual hours of the night and under suspicious circumstances. Respo't further specially alleges that the pretended warehouse receipts and the pretended pledge set up by intervenor lack all the essentials to create a valid pledge and are null and void and simulated; that they conferred no legal possession or ownership on Meyer, and consequently none on his transferee or pledgee, and that the said whiskey still continued in the legal possession of Dreyfus. Respo't denies that intervenor is pledgee in good faith or an innocent third party, because the failure and conduct of Dreyfus were notorious and published in the newspapers in this city on Sunday and Monday morning, the 28 and 29th Oct., and he was bound to inquire into the good faith of his transferrer and into the validity of his pretended title. Respo'ts also aver that neither Weill or Meyer pretended to be in open and fair possession of said goods and were merely midnight receivers of merchandise which the owner and master was trying to conceal and hide from his creditors on the eve of his failure and in the midst of his insolvency. Respo'ts further allege that said Dreyfus, Weill, Ermann, and Mayer combined and conspired fraudulently to conceal, hide, and dispose of said goods with the intent to cheat y'r resp'ts and other creditors, and that the whole transaction disclosed by intervenor

258 is a sham and simulation, illegal, null, and void, and conferred no title or possession whatever from Dreyfus to either of them.

Wherefore respo't prays that said intervention and 3rd opp. be dismissed with costs; that the pretended pledge be declared simulated, null and void, and illegal, and for judgment with lien and privilege on the property sequestered or its proceeds in preference to all others, and for general and equitable relief.

(Signed) D. C. & S. S. LABATT.

Exception. Filed Nov. 13, 1883.

H. WEILER & Co.
vs.
J. DREYFUS. } No. 10371.

Defendant, as an exception to pl'ffs' action, avers—

That prior to the institution of this suit plaintiffs instituted a suit against him, now pending in this court, No. 10363, for same object and growing out of same cause of action. Wherefore he avers he cannot be compelled to answer hereto, and prays that pl'ffs' action be dismissed.

(Signed) A. H. LEONARD, *Att'y.*

Exception. Filed Nov. 26*th*, 1883.

H. WEILER & Co.
vs.
J. DREYFUS. } No. 10371.

Defend't, as an exception to pl'ffs' action, avers that same is
259 premature, it appearing on face of pl'ffs' petition that obligations sued on are not due or exigible; wherefore he prays that pl'ffs' action be dismissed.

(Signed) A. H. LEONARD, *Att'y.*

Exception to be Treated as an Answer.

Extract from Minutes, November Term.

NEW ORLEANS, THURSDAY, *December* 6, 1883.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS; A. ERMANN, Intervenor. } No. 10371.

Upon motion in that *in* behalf of counsel for the plaintiffs it is ordered that the execution of prematurity of action filed by the defendant in above cases be each treated as an answer with leave to the said defendant to amend.

Verdict for Intervenor.

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *February 27th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

This cause as continued from the 25th instant came on this
260 day to be heard further; and, the said counsel for the parties, as well as the jurors empanneled in the cause, being all present, the trial was proceeded with; and, after hearing further evidence and the arguments of counsel and receiving a charge from the court, the jury retired to deliberate upon their verdict, John Douglas being appointed their foreman.

After due deliberation the jury returned into court, and then and there, through their said foreman, delivered the following verdict, to wit:

We, the jury, find for the intervenor.
(Signed) JOHN DOUGLAS, *Foreman.*

Feb'y 27th, 1884.

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

Judgment for Intervenor.

Extract from Judgment Book No. 12, folio 454.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1883.

NEW ORLEANS, WEDNESDAY, *February 27th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

261 H. WEILLER & Co.
vs.
JOSEPH DREYFUS; A. ERMANN, Intervenor, &c. } 10371.

By reason of the verdict of the jury herein and in accordance therewith it is ordered, adjudged, and decreed that Abraham Ermann, intervenor and third opponent herein, be, and he is hereby recognized to be, the lawful pledgee of the ten barrels of whiskey sequestered in this case, to wit, three (3) barrels Imperial Cabinet whiskey, 142 gallons; five (5) barrels private stock B, 240 gallons;

2-10 private stock A, 94-2 gallons; that the same be delivered to him and the writ of sequestration herein issued be, and the same is hereby, dissolved at plaintiffs' costs.

And, considering the effect of the verdict, it is further ordered, adjudged, and decreed that the plaintiffs, H. Weiller & Co., do have and recover of and from the defendant, Joseph Dreyfus, the sum of two thousand six hundred and forty-six $\frac{95}{100}$ dollars, with five per cent. per annum interest from November 2nd, 1883, until paid, and costs, without lien on the property sequestered.

Judgment rendered February 27th, 1884.

Judgment signed March 3rd, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

262 *Notes of Ermann.*

$5,000.00. NEW ORLEANS, *Oct. 29th*, 1883.

Sixty days after date I promise to pay to the order of L. Meyer five thousand $\frac{00}{100}$ dollars at the People's Bank, value received, with eight per cent. interest per annum from —— until paid.

No. 12. Due ——. A. ERMANN.

Endorsed: L. Meyer. Paid Jan'y 2, '84. Leon Cahn.

$5,000.00. NEW ORLEANS, *Oct. 29th*, 1883.

Ninety days after date I promise to pay to the order of L. Meyer five thousand $\frac{00}{100}$ dollars at the State National Bank, value received, with eight per cent. interest per annum from —— until paid.

No. 13. Due ——. * A. ERMANN.

Endorsed: L. Meyer.

5 *Warehouse Receipts of H. Weiller.*

263 1 (D).

NEW ORLEANS, *Oct.* 28, 1883.

Received from L. Mayer, in apparent good order, on storage in *auer* warehouse—

Subject to the following conditions—goods deliverable on production of this receipt or on the written order of parties in whose favor it is given; goods when transferred deliverable only on return of this receipt:

$\frac{5}{4}$ pipes B., D. & Co. cognac.
9 bbls. Shmith Blair.
$\frac{3}{8}$ pipes Gr. Gavi cognac.
$\frac{2}{8}$ " Boston "
$\frac{3}{8}$ " kirschwasser.

MEYER, WEILL & CO.

Endorsed: L. Meyer.

* Erased in original.

2 (E).

NEW ORLEANS, *Oct.* 28, 1883.

Received from L. Meyer, in apparent good order, on storage in *auer* werehouse—

Subject to the following conditions—goods deliverable on production of this receipt or on the written order of parties in whose favor it is given; goods when transferred deliverable only on return of this receipt:

264 ⅛ pipes port.
⅛ Parnet sherry.
⅛ El Dorado "
4 bbls. Monongahela XXX rye.
6 Don Carlo.
6 Imperial Cabinet.
5 La Bell.

MEYER, WEILL & CO.

Endorsed: L. Meyer.

3 (F).

NEW ORLEANS, *Oct.* 28, 1883.

Received from L. Meyer, in apparent good order, on storage in *auer* warehouse, subject to the following conditions—goods deliverable on production of this receipt or on the written order of parties in whose favor it is given; goods when transferred deliverable only on the return of this receipt:

3 bbls. Imperial Cabinet rye.
5 " *pirat* stock B.
2 " Defiance.
2 " Lazy Ben.
1 " Planters' bourbon.
2 " Gilt Edge.
6 " peach rum.
3 bbls. Golden-Sheaf bourbon, 75.
265 3 bbls. Golden Sheaf bourbon, 76.
13 " Monarch.

MEYER, WEILL & CO.

Endorsed: L. Meyer.

4 (G).

NEW ORLEANS, *Oct.* 28, 1883.

Received from L. Meyer, in apparent good order, on storage in *auer* warehouse—

Subject to the following conditions—goods deliverable on production of this receipt or on the written order of parties in whose favor it is given; goods when transferred deliverable only on the return of this receipt:

⅒ London Dock gin.
⅛ Antarel Dupey cognac.
⅛ Hennesey "

1 bbl. Incomparable.
1 " Southern Home.
20 baskets champagne.

MEYER, WEILL & CO.

Endorsed: L. Meyer.

266 5 (H).

NEW ORLEANS, *Oct.* 28*th*, 1883.

Received from L. Meyer, in apparent good order, on storage in *auer* warehouse—

Subject to the following conditions—goods deliverable on production of this receipt or on the written order of parties in whose favor it is given; goods when transferred deliverable only on the return of this receipt:

Thirty cases cigars in bad condition.
Same, case broken.

MEYER, WEILL & CO.

Endorsed: L. Meyer.

Checks Produced by L. Meyer.

No. —. NEW ORLEANS, *Oct.* 29*th*, 1883.

State National Bank, 31 & 33 Camp street,

(Stamp.) Pay to L. Meyer or bearer twenty-five $\frac{00}{100}$ dollars.
$—. A. ERMANN.

Endorsed on face: State National Bank. Paid Nov. 1, 1883.
267 Endorsed on back: L. Meyer.

No. —. NEW ORLEANS, LA., *Oct.* 29*th*, 1883.

Germania National Bank

Pay to the order of L. Meyer twenty-five hundred $\frac{00}{100}$ dollars.
$2,500.00. A. ERMANN.

Stamped on face: Germania Nat'l Bank. Paid Nov. 1, 1883. New Orleans, La
Endorsed: L. Meyer. For deposit. Meyer, Weill & Co., p'r J. G. Weill.
Stamped on back: Received on deposit Nov. 2, 1883. Union Nat'l Bank.

$2,500.00. MORGAN CITY, LA., *Jan'y* 2, 1884.

Germania National Bank

268 Pay to the order of bills payable twenty-five hundred dollars.
No. 42. A. ERMANN.

Stamped on face: Germania Nat'l Bank. Paid Jan'y 23, 1884. New Orleans, La.
Endorsed: For deposit. Leon Cahn.
Stamped on back: Whitney Nat'l Bank. Jan. 22, 1884. New Orleans.

No. 85. MORGAN CITY, *Jan'y* 2, 1884.

State National Bank of New Orleans

Pay to the order of bills payable two thousand five hundred and sixty-six $\frac{66}{100}$ dollars.
$2,566.66. A. ERMANN.

Stamped on face: State National Bank. Paid Jan. 23, 1884. Exchanges.
Endorsed: For deposit. Leon Cahn.
Stamped on back: Whitney Nat'l Bank. Jan. 22, 1884. New Orleans.

No. 5. NEW ORLEANS, *Jan.* 28, 1884.

Whitney National Bank of New Orleans

269 Pay to the order of bills payable fifty-one hundred dollars.
$5,100.00. A. ERMANN.

Stamped on face: Whitney Nat'l Bank. Paid Jan. 29, 1884. New Orleans.

3 *Notes of L. Meyer, with Endorsements Thereon.*

"A."

$5,000.00. NEW ORLEANS, *Oct. 29th*, 1883.

Forty days after date I promise to pay to the order of A. Ermann, Esqr., five thousand dollars, for value received, with interest at the rate of eight per cent. per annum from maturity until paid. Payable at the People's Bank of New Orleans.

This note is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment the holder is hereby authorized to sell the said securities at public or private sale, without recourse to legal proceedings, and to make any transfers that may be required, applying proceeds of sale towards payment of this note. Margins to be kept good.

L. MEYER.

Endorsement: Five warehouse receipts, dated Oct. 28th, 1883, numbered 1, 2, 3, 4, & 5, issued by Meyer, Weill & Co. to L. Meyer, and by him endorsed to A. Ermann, payee. L. Meyer.

270 "B."

$5,000.00. NEW ORLEANS, *Oct. 29th*, 1883.

Sixty days after date I promise to pay to the order of A. Ermann, Esqr., five thousand $\frac{00}{}$ dollars, for value received, with interest at the rate of eight per cent. per annum from maturity until paid. Payable at the People's Bank of New Orleans.

This note is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment the holder is hereby authorized to sell the said securities at public or private sale, without recourse to legal proceedings, and to make any transfers that may be required, applying proceeds of sale towards payment of this note. Margins to be kept good.

L. MEYER.

Endorsement: Five warehouse receipts, dated Oct. 28th, 1883, numbered 1, 2, 3, 4, & 5, issued by Meyer, Weill & Co. to L. Meyer, and by him endorsed to A. Ermann, payee. L. Meyer.

"C."

$5,000.00. NEW ORLEANS, *Oct. 29th*, 1883.

Seventy-five days after date I promise to pay to the order of A. Ermann, Esqr., five thousand $\frac{00}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum from ma-
271 turity until paid. Payable at the People's Bank of New Orleans.

This note is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment the holder is hereby authorized to sell the said securities at public or private sale, without recourse to legal proceedings, and to make any transfers that may be required, applying proceeds of sale towards payment of this note. Margins to be kept good.

L. MEYER.

Endorsement: Five warehouse receipts, dated Oct. 28th, 1883, numbered 1, 2, 3, 4, & 5, issued by L. Meyer Weill & Co. to L. Meyer, and by him endorsed to A. Ermann, payee. L. Meyer.

Answers of Meyer Weill & Levy, Garnishees, in H. Weiler & Co. vs. Dreyfus.

Answers of Meyer Weill, garnishee. Filed Nov. 7, 1883.

U. S. Circuit Court, E. D. of L.

H. WEILLER & Co.
vs.
JOS. DREYFUS. } No. 10363.

Answers of Meyer Weill, made garnishee herein, to the inter-
272 rogatories propounded to him by the plaintiff.

1st. To the 1st interrogatory: No.

2nd. To the 2nd interrogatory: No.
3rd. To the 3rd interrogatory: No.
4th. To the 4th interrogatory: No.
(Signed) MEYER WEILL.

Subscribed and sworn before me Nov. 7, 1883.
(Signed) F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Answers — David Levy, Garnishee. Filed Nov. 7, 1883.

U. S. Circuit Court, E. D. of La.

H. WEILLER & Co.
vs.
JOS. DREYFUS. } No. 10363.

Answers of David Levy, made garnishee herein, to the interrogatories propounded to him by the plaintiff.

1st. To the 1st interrogatory: No.
2nd. To the 2nd interrogatory: No.
3rd. To the 3rd interrogatory: No.
4th. To the 4th interrogatory: No.
(Signed) DAVID LEVY.

Subscribed and sworn before me Nov. 7, 1883.
(Signed) F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

273 JULIUS FRIEBOURG *et als.*
vs.
JOS. DREYFUS *et als.* } No. 10505.

Testimony taken by consent, at the office of Mess. Singleton, Browne & Choate, on Wednesday, July 2nd, 1884, for defendants.

Appearances: D. C. Labatt, Esq., for complainants; Mess. Singleton, Browne & Choate, for respondents.

ABRAHAM ERMANN, being sworn, deposes and says:

Examined in chief by Mr. BROWNE:

Q. You are one of the defendants in this suit?
A. Yes, sir.
Q. How old are you?
A. Sir?
Q. How old are you—what is your age?
A. I am getting on to forty.
Q. Where did you reside in October, 1883?
A. I resided in Morgan City.

274 Q. How long had you resided there?
A. Thirteen years.
Q. What was your business there?
A. General merchandizing.
Q. You are one of the defendants in this case?
A. Yes, sir.
Q. Do you know the other defendants, Dreyfus—Joseph Dreyfus—and Lehman Meyer?
A. Yes, sir.
Q. How long had you known Joseph Dreyfus prior to October 1883?
A. I had known him about fifteen years—sixteen years.
Q. And Lehman Meyer?
A. Lehman Mayer I had known ten years previous to that.
Q. What were your relations with them socially?
A. I have been friendly with them ever since I have known them.
Q. What were your business relations with them?
A. I used to buy my liquors from Mr. Dreyfus, and I used to buy other things as I wanted them.
Q. Well, what transactions had you had with Meyer?
A. With Meyer? I didn't have any regular transactions with him, only I have been friendly all along to him.
Q. I mean such as lending him money, or anything of that kind?
A. I have loaned him money occasionally; whenever he needed a thousand or two thousand dollars I always loaned it to him.
Q. How often did you visit New Orleans?
A. Sometimes once and sometimes twice a month, sometimes more; just as business had called me here.
275 Q. What were your facilities for visiting New Orleans?
A. How do you mean by "facilities?" What do you mean by that?
Q. How did you come?
A. I came by the railroad. I came from Morgan City here by the railroad. Whenever I came here it didn't cost me anything to come. I always had a free pass over Morgan's railroad.
Q. Where did you stop when you came here on Sunday, the twenty-eighth day of October, 1883?
A. I stopped at Mr. Dreyfus' residence.
Q. What time of the day did you get here?
A. I got here, about as near as I can remember, about five o'clock in the evening.
Q. What time did you get up to Dreyfus' house?
A. About six o'clock.
Q. You arrived here about five and got there about six?
A. Yes, sir; I arrived here at five o'clock and got there about six o'clock.
Q. Where had you stopped heretofore in coming to New Orleans?
A. Always stopped at Dreyfus'; made Dreyfus' my home for the time being.
Q. Where did Dreyfus live?

A. He lived on Josephine street.

Q. What district?

A. I don't know, sir, what district it was. Near Prytania, 324 Josephine street.

Q. How long had you been in that habit?

276 A. I have been in that habit for a good many years. I stopped with Mr. Dreyfus when he lived—before he moved in that house that he occupied last I used to stop with him then. That was ten or twelve years ago.

Q. What knowledge did you have of the affairs of Dreyfus—his financial affairs—up to the twenty-ninth day of October, 1883?

A. Of his financial affairs?

Q. Yes. What did you consider him?

A. I always considered him as a man of means and good standing.

Q. And Meyer?

A. Meyer just the same. Always known him to be a gentleman; always agreed with him.

Q. What was Meyer doing here? What business was he in?

A. He was in business. He was in the commission business.

Q. Had he any other business?

A. He had; not here in the city.

Q. Well, anywhere?

A. In Thibodeaux.

Q. What did he do there?

A. He has a plantation up in Thibodeaux and he has a store there.

Q. A store there? He has a store there?

A. Yes; he has got a store there.

Q. Was it much of a plantation, or what was it, do you know?

A. I don't know much about his plantation. I know it is a pretty good-sized place.

Q. When you arrived at Dreyfus' house on Sunday afternoon, the twenty-ninth of October, whom did you see there; whom did you meet?

277 A. Mr. Meyer.

Q. Where was Dreyfus?

A. Dreyfus I didn't see, but I was told that he was upstairs with his wife, as she was sick. They said that his wife being sick he was upstairs.

Q. When did you see Dreyfus first?

A. I saw Dreyfus the next morning down town.

Q. About what time?

A. Well, I judge it must have been about—when I saw him it must have been between nine and ten o'clock.

Q. What conversation did you have with him?

A. I didn't speak to him at all. I met him going across the post-office way, but I didn't say anything to him.

Q. What breakfast had the family taken that morning together?

A. I don't know of any breakfast. I have never taken any breakfast there. I never take any breakfast there. I always take a cup of coffee before going down town. I always took a cup of coffee

before I went down town. Never took any breakfast, so I don't know what the family had.

Q. What assembling is there usually in the family there for breakfast—among all the members?

A. Whenever I have stopped there I know I have never taken breakfast there. I have always taken a cup of coffee, and it is brought—I have always taken a cup of coffee and a piece of bread and butter and sometimes nothing. I usually ate breakfast down town, and never ate any breakfast there.

278 Q. When did Meyer first approach you with reference to the loan of money to him?

A. On the evening of my arrival.

Q. What?

A. On the evening of my arrival.

Q. What time, about?

A. Well, it was about seven o'clock.

Q. What did he say to you in reference to it?

A. He told me that he was glad to see me. He said he was glad to see me, and that I was just the man he wanted to see, as he wanted to make a transaction with me.

Q. What was that transaction?

A. He told me that he had a lot of goods that he wanted to borrow fifteen thousand dollars on. I asked him what they cost, and he told me what he had in the warehouse twenty thousand dollars' worth. He told me that he had twenty thousand dollars' worth of goods in the warehouse.

Q. What warehouse?

A. The warehouse of Meyer Weill.

Q. What evidence had you or did he give you of these goods being there? Did he give you any evidence of his having these goods there?

A. He didn't show me anything, only he said he had Meyer Weill's warehouse receipts.

Q. When did he first exhibit those to you?

A. Sir?

Q. When did he first exhibit those to you?

279 A. The warehouse receipts?

Q. Yes.

A. He told me that he had them in the evening, but I did not see them until next morning.

Q. Well, what did you do then with reference to it?

A. I told him that I had some money, and if I could help him, if he needed the money, I may make the transaction with him. I said, "If you need the money and I can help you I may make the transaction," and I told him that I would see about it in the morning. I told him further that I wouldn't like to invest fifteen thousand dollars all in cash, as, in fact, I didn't have the money to spare at the time, but I might make the transaction with him, and that I would see about it in the morning.

Q. Well, was the matter concluded that night or not?

A. Well, the matter was not exactly concluded. It was not ex-

actly concluded that night, but I told him that we will arrange it next morning. I told him that I thought I could make him the loan. The next morning——

Q. Go on.

A. Mr. Meyer called on me in my room and asked me if I was all ready to go down town. That was about seven o'clock when he came there. I told him "yes;" I was ready to go down town, and we took a cup of coffee together, and we went down town, and spoke over the matter going down in the car, and after awhile I concluded to make him the loan. I concluded to do it, and gave him
280 five thousand dollars cash, and would give him my notes for the balance for sixty and ninety days.

Q. Did those notes bear interest from date, or how?

A. Yes, sir; they bore interest from date.

Q. When those notes fell due what became of them?

A. I paid them; took them up.

Q. What did you pay for the first one?

A. The first one, if my mind remembers me well, it was five thousand and sixty-six dollars and sixty-six cents ($5,066.66). It is mighty hard to keep those things in your head.

Q. And the second note?

A. The second note I took up also. It was five thousand one hundred ($5,100) dollars.

Q. Is that the memorandum of them? (Document exhibited to witness.)

A. Yes, sir; that is the memorandum of them.

Q. When did you pay the first one and where did you pay it?

A. I paid them——

Q. The first one, now; when did you pay it?

A. December.

Q. Or January, which? January 2nd, wasn't is?

A. Yes, sir; January 2nd.

Q. 1884?

A. Yes, sir.

Q. Where did you pay that?

A. I paid that in two checks, one of two thousand five hundred ($2,500) dollars on the Germania National Bank, and one of
281 two thousand five hundred and sixty-six ($2,566.66) dollars and sixty-six cents on the State National Bank.

Q. Where was that note when you paid it?

A. It was in the hands of Mr. Cahn—Leon Cahn.

Q. What Cahn—John Cahn?

A. No; Leon Cahn.

Q. The second note—when did you pay it?

A. The second note—when did I—I paid the second note on January 30th; that I took up in the Whitney National Bank. Five thousand one hundred dollars, that was.

Q. What was the condition—financial condition—of Lehman Meyer when you made him that loan, to all appearances?

A. Well, I hadn't seen anything different from any other time with Mr. Meyer. As he needs money sometimes I didn't ask him

what he wanted with the money. He merely told me that he needed the money, and I would greatly oblige and accommodate him if I made him that loan.

Q. You don't understand my question exactly. I mean to say, so far as you knew then or for some time subsequently, what was his financial condition, apparently?

A. Always been good.

Q. Do you know when he failed eventually?

A. Well, I don't know exactly. I think he failed some time during the month of December, as much as I can recollect.

Q. He was not under protest when you made him that loan?

A. No, sir! no, sir! He paid bills long afterwards. I believe he paid as long as he could pay.

282 Q. When did you learn or first learn of Dreyfus' attempt to remove his goods, or to dispose of his goods, or to make away with them, or to sell them, or of the attachments that were made against them?

A. Well, I don't know anything about all those things that you mention—that is, I didn't know anything about all those things that you mention until half past ten or eleven o'clock Monday—about half past ten. I didn't know a thing about it.

Q. Monday morning?

A. Yes, sir.

Q. About half past ten?

A. Yes, sir. I was as ignorant of the Dreyfus failure as a newborn child.

Q. Where had you been from seven o'clock in the morning up to that time?

A. Well, at seven o'clock I went with Mr. Meyer in his store. It was where I closed my transaction with them for that loan.

Q. How long did you remain there—how long a time did you remain there?

A. I remained there for about an hour.

Q. Where did you then go?

A. From there I went with Mr. Meyer, and we went and took lunch—breakfast, rather—at Vonderbank's.

Q. And about when did you get through that?

A. Well, we were there fully an hour—over an hour.

Q. When did you first see the paper that morning?

283 A. I didn't see the paper that morning until it was made known to me at Lehman's. They asked me if I had heard of the smash-up. That was close up to ten o'clock—close up to ten. That was the first thing I heard. I says, "What?" And they says, "Don't you know that he is busted?" I said no, I didn't know anything about it. I thought he was joking. He says, "Look at the paper and see." That was the first thing I knew of Dreyfus' failure, and that is a fact.

Q. What intimation or knowledge had you of the condition, or insolvent condition, of Joseph Dreyfus up to nine o'clock on Monday morning, the 29th day of October, 1883?

A. None whatsoever; none whatever.

Q. Are these the warehouse receipts that were shown to you by Lehman Meyer? (Documents marked — shown to witness.)

A. Yes, sir; those are the warehouse receipts, the identical ones.

Q. And when did he show them to you first you say?

A. I saw them Monday morning.

Q. Monday morning?

A. Yes, sir.

Q. Where did you first see them, Mr. Ermann?

A. At Mr. Lehman's place of business.

Q. What street; at the store?

A. Yes, sir; No. 5 Tchoupitoulas street. I saw them at Meyer's store, No. 5 Tchoupitoulas street.

Q. What did he give you as evidence of that loan that you made him?

284 A. He gave me those warehouse receipts, together with his promissory notes.

Q. Dated when?

A. Dated on the same day that I made the transaction with him, on the 29th of October. They were dated on the 29th of October.

Q. They were due—do you recollect when?

A. I don't recollect when they were due; to the best of my recollection, forty-five, sixty, and seventy-five days after date.

By Mr. BROWNE: "I offer those three notes in evidence. They were a part of the record No. 10371 of the docket of the circuit court of the United States, case of H. Weiller *vs.* Joseph Dreyfus. I offer also warehouse receipts which are here. They are a part of the record also."

Q. When did you return to Morgan City from New Orleans?

A. Twelve o'clock Monday.

Q. What intimation did Lehman Meyer give you of the condition of the affairs of Joseph Dreyfus on Sunday afternoon or on Monday morning?

—. ——.

Q. When were the endorsements made on those notes, on those three notes of Meyer that he delivered to you?

A. At the time when he gave them to me. They were made at the time he gave them to me.

Q. Where were the notes executed and delivered to you and these warehouse receipts?

285 A. At Lehman Meyer's place; at Lehman Meyer's store.

Q. Whose handwriting is that to those warehouse receipts?

A. I don't know.

Q. Look at them. I don't mean the body of them. I mean the writing at the bottom.

A. That is Meyer Weill's.

Q. You recognize that signature as Meyer Weill's writing?

A. Yes, sir; I recognize that. That is his signature. I know his signature.

Q. What had been your relations with Meyer Weill?

A. Well, I had done business with Meyer Weill for eighteen years.

Q. Since eighteen years, eh?

A. Eighteen years ago I used to buy goods from him.

Q. What was his standing as a man of means, of reliability, and of solvency?

A. Well, everybody knows what he is worth—that he is rich. I consider him worth over two hundred thousand ($200,000) dollars.

Q. What I wish to get at is as to the—as to your reliance—as to what your reliance was on those warehouse receipts when presented to you?

A. I noticed Meyer Weill's signature on them, and whenever I see his signature on it—and when I see his signature on it and he agrees to pay anything—I take it for goods. Whenever I saw
286 his signature on a paper and he agrees to pay anything I always thought it was all right. I know very well that Meyer Weill wouldn't sign any receipt unless he has the goods in his possession. Whenever I saw his signature I felt that he had the goods there.

Q. Well, did he say in his information to you where these goods came from?

A. No, sir.

Q. Well, what inquiry did you make, or, if you made none, why did you make none?

A. Well, I don't see why I should make any inquiries. I had full faith and confidence in Lehman Meyer, and also had full faith and confidence in Meyer Weill. Why should I ask them any questions? I didn't consider that it would be right on my part to ask for it, as I had faith and confidence in Lehman Meyer, and I was sure that he would not have made any misrepresentation to me.

Q. What was there in Dreyfus' house or anything else that you saw after you arrived there to arouse or create suspicion in your mind?

A. I didn't notice anything whatever, only I asked Meyer where Mr. Dreyfus was and how the old folks were, and he says, Mr. Dreyfus is upstairs, and the old lady is very sick—his wife. I didn't see any disturbance there whatever. I swear to you and I hope I may never get out of this room if I had any suspicions.

Q. What time did you go to bed that night?

287 A. I went to bed about nine o'clock; a little after nine o'clock.

Q. All the goods that were in those receipts at the time of the filing of the injunction in this case had been sold except those you executed a bond for subsequently?

A. Yes, sir.

Q. You don't know of your own knowledge anything about the removal of these goods or the purchase of them by Lehman Meyer at all?

A. No, sir; I do not.

Q. Mr. Ermann, are you a man of small means or large means?

A. Sir?

Q. Are you a man of small means or of large means?
A. Well, I don't know what you may call it, but I consider I am worth fifty thousand dollars ($50,000).
Q. Are you worth no more than fifty thousand dollars?
A. Well——
Q. It is a matter for you to answer here.
A. That is a ticklish thing, you know.
Q. I ask you what you consider yourself worth now? At the time you made that transaction with Lehman Meyer what did you consider yourself worth?
A. Well, I don't consider myself worth much more than that.
Q. What?
A. I don't consider myself worth much more that. I don't consider myself worth much more than fifty thousand dollars ($50,000), because that I have got.
288 Q. You mean by that that you have it in hand?
A. Well, I have got it.
Q. It is not on books, eh?
A. Sir?
Q. It is not on books?
A. Oh, no.
Q. What sort of a business had Meyer been doing here for a long time prior to this—to the 29th of October, 1883?
A. Well, he has been doing a commission business.
Q. Was it a small or considerable business?
A. It was a pretty good business.
Q. What sort of a business had Dreyfus been doing?
A. Dreyfus had been doing a pretty good business—a pretty large business.
Q. What was his business?
A. Who, Dreyfus?
Q. Yes.
A. In the wholesale liquor business.
Q. Tobacco?
A. Cigars, not tobacco; cigars. He only sold cigars and liquor.

Cross-examination by Mr. LABATT:

Q. Mr. Ermann, what brought you to New Orleans, especially on Sunday night, when you arrived in New Orleans on October 29th?
A. Well, nothing very special brought me, as I travel cheap. I thought, "Well, I will run down to New Orleans," as I have
289 often done before, sometimes to have a game of poker and go back the next morning; but then, not often—a game of cards, you might say. I travel cheap, so I run down occasionally to New Orleans and sometimes have a game of cards.
Q. Well, there had been, then, no request for you to come to New Orleans, especially from Meyer?
A. No, sir.
Q. No letter?
A. Not that I can recollect of any.

Q. No dispatch?

A. No, sir.

Q. You came purely on your own motives?

A. Yes, sir.

Q. Don't you remember swearing in court that you had received a letter two days before asking you to come to New Orleans, that he wanted to see you—that he wanted to see you?. Didn't you swear that?

A. I don't recollect ever having stated that.

Q. I only ask you whether you recollect it. Now you say there was no letter, no dispatch, and you came here purely out of your own monition?

A. Yes, sir.

Q. You came here but of your own accord, did you?

A. Yes.

Q. How came Meyer to say, then, "You are the very man I want to see;" do you know how he came to say that?

A. No; I don't know. He was glad to see me. He was

290 glad to see me.

Q. But he immediately opened this matter of business?

A. Well, not immediately; not right away.

Q. Not immediately?

A. No; he did not open the subject immediately; not right away, but soon after. He says to me, "I am glad to see you." He told me, "I am glad to see you. I am in a sort of a hard pinch and need money, and you are the man that can help me."

Q. Did you ask him what that pinch was?

A. No, sir.

Q. Did he tell you what it was?

A. Sir?

Q. Did he tell you what it was?

A. No, sir.

Q. I understand you to say, then, that on his stating to you and assuring you that he had goods at Meyer Weill's, evidenced by receipts, which you didn't see until the next day——

A. No, sir.

Q. He proposed to you to lend him fifteen thousand dollars?

A. Yes, sir.

Q. On those goods?

A. Yes; seventy-five per cent., at seventy-five cents on the dollar.

Q. Did he exhibit any invoice of those goods showing their value or their contents?

A. No, sir.

291 Q. At no time did he do so during the transaction, did he?

A. No, sir; not during the transaction; at no time during the transaction.

Q. How did you estimate or ascertain the value of the goods, which I understand you never inspected or saw, to find out what was the value of those goods? Did you make any calculation to ascertain the value of those goods prior to lending fifteen thousand dollars thereon?

, A. Well, he tells me that these goods amounted to twenty thousand dollars.

Q. He told you that and you relied only on his statement?

A. Well, I know very well that he would not misrepresent it to me. I have looked over the list and noticed pipes of imported cognac and whiskey; and so on, and I made a rough estimate and found about that amount.

Q. You made a rough estimate in your mind?

A. Yes, sir.

Q. Not by figures?

A. Yes; I figured a little on it.

Q. You are sure of that?

A. Yes; I figured on it—made a rough estimate—and found about twenty thousand dollars ($20,000).

Q. How did you figure it up; how did you do it? How did you know the number of gallons, the quality, &c.?

A. Well, that's easy; any merchant who has had anything to do with the business knows how much there is in a pipe of whis-
292 key—forty or forty-two gallons. Anybody who has had anything to do with the business knows that; that is an easy thing to do.

Q. Cannot the price differ so materially that a man can be deceived in the value of the articles if he did not inspect them and see the quality? Could not a man be deceived in that way, the prices of the different articles differing so materially and his not having inspected them to see the quality; is it so?

A. No; the goods can be judged by the brand.

Q. You didn't, then, before making the loan, go to Meyer Weill and see Meyer Weill or any of his clerks to inspect the goods or see the invoice?

A. No, sir; I didn't see the invoice. I merely seen that Meyer Weill had receipted "for the following goods, herein mentioned."

Q. I only want to get at the exact facts as you have stated them. You made no inquiry as to where he obtained these goods?

A. No, sir; none whatever.

Q. And you asked him nothing as to his circumstances, to know whether he was about to fail or not?

A. No, sir.

Q. How much were you to make as your share of the pecuniary profit out of this fifteen-thousand-dollar transaction?

A. Well, I invested my money at eight per cent. and I
293 have got a commission of two and a half per cent.

Q. On fifteen thousand dollars ($15,000)?

A. Yes, sir.

Q. How much did you get after deducting the interest which you paid, and how much did you make on the transaction at two and a half per cent. and eight per cent. interest? You paid one hundred and sixty-six dollars interest; what was the exact profit you made on this transaction?

A. Well, one interest stood off the other, and I only made a commission of two and a half per cent.

Q. His notes didn't bear interest until after maturity. His notes that he gave you didn't bear interest until after maturity, not until after maturity, whilst yours bore interest from date to maturity, making that difference that you paid out one hundred and sixty-six dollars for the time and within the time, because yours was of shorter date. Now, take that two and a half per cent., which is three hundred and seventy-five dollars ($375), and from it subtract one hundred and sixty-six dollars for interest and how much does it leave you?

A. Two hundred and nine ($209) dollars; that's what it leaves.

Q. And you had no other compensation for the loan than that, as I understand you?

A. No, sir; but I don't know whether you may be correct, but I was under the impression that his notes bore interest.

Q. Only after maturity; it was drawn up that way. Yours
294 bore interest from date. Now, did you insure these goods after you made this transaction?

A. Yes, sir.

Q. In which office?

A. It was insured by—I told Mr. Weill to insure those goods.

Q. When did you tell him that?

A. Sir?

Q. When did you tell him that?

A. I told him after I came down—Wednesday, I think.

Q. But up to that time you didn't make any arrangements for the insurance of your interests in those goods?

A. No, sir; I never thought of the failure.

Q. You didn't ask Mr. Meyer whether the goods were insured or not, did you?

A. No, sir.

Q. Did you ever make such a transaction as this before in your life?

A. Not as large as that; no, sir.

Q. Not as large?

A. Not as large as that; no, sir.

Q. Did you ever make one less than this in which—in your life, in which you gave out your notes and cash to make a loan of money on goods or property?

A. Well, I haven't made any transactions similar to that. My transactions were different. I have loaned money or a man comes and sells me a note.

295 Q. You have never made any similar transactions to this?

A. No, sir; not on warehouse receipts.

Q. Did you ever make any similar transactions in New Orleans, since your residence at Morgan City, with anybody?

A. Yes, sir; I have loaned money.

Q. Similar transactions?

A. No, sir; not similar transactions to this.

Q. How did you approach the store of Meyer on that morning when you went to his store and loaned—that Monday morning, which way did you go?

A. To Lehman Meyer's store?
Q. Yes.
A. I took a Prytania street car.
Q. And came down what street?
A. Came down Prytania street as far as Canal; got out at Canal and walked around on Gravier to Meyer's place.
Q. How far is Meyer's store from Dreyfus'?
A. I think it is about two blocks; I am not certain. You know Meyer's place is right at the corner on Canal street; then comes Common—Gravier; it is more than two blocks. Common street is the first street, then comes Gravier, after Gravier comes Natchez. It is between Natchez and Gravier.
Q. It is between Natchez and Poydras?
A. No, sir; it is two squares from Canal; two squares and a half.
Q. You saw and heard nothing that morning of any commotion that had taken place in Dreyfus' store, and made no inquiry?
296 A. Nothing until about ten o'clock, when Mr. Lehman informed me of the smash-up.
Q. Nothing until about ten o'clock, when Mr. Lehman informed you of the smash-up?
A. Yes, sir; not this Lahman, but A. Lehman.
Q. Where was that—at his store?
A. Yes, sir; right at the corner, at his store.
Q. Did that cause no alarm in your mind as to your transaction with Lehman Meyer, the son-in-law of Mr. Dreyfus, who was living in the same house with him?
A. Sir?
Q. Did that cause no alarm in your mind as to your transaction with Lehman Meyer, Mr. Dreyfus' son-in-law, who was living in the same house with him?
A. That didn't strike my mind just then, but I thought over the matter after I was on my way, and it kind of struck me that he must have got it from Dreyfus.
Q. Did Lehman Meyer go with you to the car?
A. No, sir.
Q. Was he with you? Did you see him after you learned of the smash-up?
A. He was with me until a little after we left from breakfast, when he separated from me; that was after I was out of his company that I learned of the smash-up.
Q. You didn't see him afterwards?
A. No, sir; I did not see him afterwards. I did not see
297 him after that time, sir; no, sir.
Q. Until when?
A. Until I came back to New Orleans again. I did not see him until after I came back to New Orleans again.
Q. What brought you back to New Orleans so suddenly; what connection with this business brought you back to New Orleans?
A. What brought me back was when I learned that the goods at Meyer Weill's that I had the loan on were attached.
Q. Sir?

A. I say that what brought me back was that I learned that the goods at Meyer Weill's, on which I had the loan, were attached.

Q. You came down then?

A. Yes, sir; I came down then on that locomotive.

Q. What took place between you and Mr. Meyer with reference to this transaction? How did you approach him, and what did you say to him, and what did he say to you?

A. Well, I was a little scared when I came down, learning that the goods were seized, and I saw Mr. Meyer about it, and he told me that—he said that he had bought the goods from Mr. Dreyfus and he paid for them, and he did not see that I had any risk to run; that I could be perfectly easy, as I was safe, and that nobody could do me anything on those goods.

Q. Did you tell him anything to the effect that he got you into a scrape; did you say anthing like that to him?

A. Well, I told him that if I had known that, that I would
298 never have entered into this transaction with him. I told him that I never would have done it.

Q. Did you not consider it a scrape or something of that kind? Didn't you use that language to him? Did you not say something of that kind to him?

A. Well, I did not want to have any trouble. I said to him that I would not have entered into that transaction with him if I had known it. I told him still further that if he had told me that it was goods he got from Joseph Dreyfus that I would not have touched them. I told him—I said, "If you had told me that the goods came from Joe Dreyfus I would not have touched them."

Q. Did you make any efforts to stop the payment of your two notes that were out under any fear that you would not be protected in your transferring this property?

A. No, sir; I did not make any effort, only I have consulted my lawyer in Morgan City and asked him. I saw Mr. Winchester, my lawyer, and asked him, "Supposing a man has a promissory note out and the party does not want to pay it, how about that?" He says, "If it is signed by a responsible party he has to pay it."

Q. But, ultimately, was it not a fact that one of these notes was never negotiated by Meyer; that the money you paid into the bank was paid to him; that he never negotiated one of the notes?

A. I don't know.

299 Q. Was anybody else's name on the back of it except Lehman Meyer?

A. I don't know. I know I sent my check with bills payable to the Whitney National for that note. That's what I know.

Q. Did you ask of Meyer any indemnity against the payment of your notes in case you should lose the title to the ownership of this property?

A. No, because I held the warehouse receipts, and, of course, I expected that the goods could not be taken away from me. I thought I was secure because I held those warehouse receipts, and I didn't think, as I said before, that they could be taken away from me.

Q. The question is whether you asked of him any additional indemnity?

A. No, sir; I did not ask him.

Q. Why did you not seek some indemnity against the danger of your eviction from the possession of these goods?

A. Well, just merely because if I would not have gotten those goods, I thought that Mr. Meyer would have satisfied me for the money that I had loaned him. I took it in that light. I did not think he would do otherwise.

Q. If he was solvent at that time and in good credit, as you say, why could he not have given you some indemnity against the danger you were running by the claims of these people on these goods at Meyer Weill's?

A. Well, I suppose that he would have done so if I had made the demand.

300 Q. He would have done so?

A. Yes, sir; I suppose that he would have given me some indemnity if I had made the demand; but I did not.

Q. But you did not make any demand?

A. No, sir; I did not make any demand.

Q. Was not Mr. Dreyfus at that time indebted to you in a very large amount on a note that you held at the time of his failure?

A. Well, I did not consider that he was indebted to me. I held his note, endorsed by Gumbel Brothers and Meyer.

Q. I know you did, but was he not indebted to you in a large amount?

A. No, sir.

Q. What did you say?

A. I said, No, sir.

Q. Are you not mistaken about that?

A. No, sir; I am not.

Q. Sir?

A. No, sir; I am not mistaken about it.

Q. Had you not a claim on him for money on a note at the time of his failure?

A. Well, fifteen thousand dollars, as I stated.

Q. Why did you say he was not indebted to you?

A. I say fifteen thousand dollars ($15,000).

Q. I understood you to say that note.

A. I said only those fifteen thousand dollars ($15,000).

301 Q. You did not have any other claim?

A. No, sir; I did not have any other claim except those fifteen thosand dollars, which I considered secured by the endorsement of Gumbel.

Q. How did you expect to pay those ten thousand dollars if you lost these goods by a decision of the court?

A. How did I expect to pay them?

Q. Yes; these notes.

A. Well, I would have had to pay them, all the same.

Q. Were you able to do so at that time that you gave them?

A. When I gave the notes?

Q. Yes. Could you have raised ten thousand dollars ($10,000) immediately to have paid those notes?

A. No, sir; I do not think that I could at the time that I gave those notes.

Q. You expected to at the time they came due?

A. Yes, sir; I expected to at the time that they came due. I expected that at the time they came due I would be able to pay them.

Q. Did you give Meyer Weill any notice, prior to leaving on Monday morning, at twelve o'clock, for Morgan City, that you had any interest in these warehouse receipts?

A. No, sir.

Q. When did you first notify Meyer Weill & Co. that these receipts had been transferred to you?

A. As soon as I came back from Morgan City.

302 Q. That was two or three days after Monday, was it not?

A. Yes, sir.

Q. Two or three days after Monday, you say?

A. Yes, sir. It was Wednesday, I think; I could not be positive of it. It was either Tuesday or Wednesday that I came home.

Q. What time did you get home?

A. I came home before three o'clock. I came here purposely. I took a special engine because I thought that perhaps I could do something in court. I thought I might be able to do something in court and took a special engine so as to get here in time. I took a special engine.

Q. How much did you give for that special engine that—you say that you had a pass?

A. I gave one hundred and twenty-five dollars for that engine. As for regular fare, I never paid anything.

Q. Who communicated to you the fact that the goods had been sold—seized, at least?

A. I received a dispatch; I disremember now if the dispatch was from Meyer or from young Dreyfus. I don't recollect whether it was from Meyer or from young Dreyfus; it was one of the two that sent it. I don't want to make any mistake about it.

Q. That is what you said before—that you were not sure which one it was, but that it was either young Dreyfus or Meyer.

A. Yes, sir; one of them.

Q. Was young Dreyfus a clerk or partner with his father?

303 A. I don't know. He might have been a clerk.

Q. What was his name?

A. Sir?

Q. What was his name?

A. Alphonse was his name.

Q. Do you know what the dispatch said? Have you got that dispatch?

A. No; I have not got that dispatch.

Q. Do you remember what it said?

A. No, sir; but I think it said "Come down immediately." I think that's what it said. I think that it said "Come down immediately; something serious."

Q. Have you sold all of those goods, Mr. Ermann?
A. Yes, sir; I have.
Q. What has been the result? How much did they produce, net?
A. I don't think I can quite—I do not think I got quite all the money out of them that I advanced.
Q. Can't you furnish an account of the exact amount?
A. Well, I had to sell a great deal on credit, and you can't tell what might come in and what will not come in. I sold a good deal on time.
Q. Have you sold a good deal on time?
A. Yes, sir.
Q. How long—on how long time?
A. I have sold some payable next November, six months from the time they were sold.
Q. At less than cost or more than cost?
304 A. Some of it was more than cost and some a little less.
Q. Are you positive that Lehman Meyer did not show you the invoice of those goods he had?
A. Yes, sir; I am positive of it.
Q. You are positive that he did not show you the invoice of those goods?
A. Yes, sir.
Q. At no time?
A. That he did not show it to me at that time. He didn't show it to me at that time; afterwards he did.
Q. How long afterwards did he show it to you.
A. After the goods were seized. He showed it to me after the goods were seized; not before.
Q. Well, but how long afterwards?
A. Well, it was the same week when I came down.
Q. Did you see or inquire—did you hear or inquire then how he had paid for them? Did you make any inquiry?
A. No, sir.
Q. Did not investigate? You did not investigate?
A. No.
Q. Do you know whether that bill was receipted or not—that invoice? The bill or invoice, was it receipted or not; do you know?
A. I don't think that it was. I am not positive of it, but I don't think that it was.
Q. And you made no inquiry why it was not receipted?
305 A. No, sir; I made none.
Q. Mr. Ermann, have you no understanding or agreement or had you none with these parties in relation to your protection against the claims of these creditors whatever, and do you declare on oath that you are out the amount of money that you loaned on them, fifteen thousand dollars ($15,000), without any security whatever except these goods?
A. Yes, sir; I am without any security whatever except these goods. I take a solemn oath on it that I had no other protection whatever; none in the least, sir.

Q. You considered this a good financial transaction?
A. I did, sir.
Q. Safe?
A. I did, sir.
Q. And that the profit you derived compensated you for the risk?
A. Well, it was a friendly act, you know. I did not look so much for the money; I did it more to oblige my friend; it was a friendly act. If I had been caring for the money I could have made more, but I did it because I thought him a friend of mine. The other day a friend of mine asked me to lend him five thousand dollars, and I could have got one per cent. a month for my money, but I said, "You are a friend of mine, and I don't like to do such transactions with you. You are a friend of mine, and I don't want to treat you like other people." I gave him the money at eight per cent., and I can produce the man himself to say so. There
306 is four per cent. I threw away merely because he was a friend of mine, and I could have had good collateral security for it. I did it more for a friendly act than for the money I made on it. I did it because he was a friend of mine; it was a friendly act; that is what I did it for.
Q. What induced you to make this transaction?
A. I did it more for a friendly act than for the money I made on it. (To stenographer:) You need not put in that other thing about the knocking off four per cent.
Q. Did Meyer explain the situation to be in such a condition as to require this act of friendship from you?
A. When—at the time?
Q. Yes. Did he exhibit such anxiety to procure the money as induced you to believe that he was in distress?
A. Well, he didn't say that he was in distress.
Q. Did he induce you to believe so from his conduct?
A. He told me that he needed the money, and I believed that he did need the money.
Q. Did he exhibit any nervousness or alarm about the chance of refusal from you?
A. No, sir; not in the least.
Q. Had you ever made such a transaction with him before on goods?
A. Sir? What's that?
Q. Had you ever made such a transaction with him before on goods?
A. No, sir. I loaned him money often, but not on goods;
307 just merely on his note.
Q. Now, where did he pay you those commissions he paid you? You say that after he gave you those checks and drew the money—I understood you to say that he gave—that he paid you a commission.
A. I don't know about his drawing the money for the checks. He paid me a commission in cash.

Q. He paid you a commission of three hundred and seventy-five dollars ($375.00)?

A. Yes, sir.

Q. At his office?

A. At his office; yes, sir.

Q. Did he pay you in bills or a cheak?

A. No, sir; in money—in cash. He paid me in cash.

Q. Was that in the morning before you went up to Morgan City? Was it before?

A. Yes, sir.

Q. Did you make any note of this transaction on your books?

A. I made a note of it on my bills payable. I made a note of it on my bills-payable book that I had such and such notes out so that I could know when they came due.

Q. Did you keep a regular set of books?

A. I keep a set of books; yes, sir.

Q. Have you a book-keeper?

A. No, sir; not at the time, because I had to give up the store business.

308 Q. And at that time—in October?

A. At that time—October?

Q. Yes.

A. I think I had sold out my store business to a young man there. I think I was not in the store business any more.

Q. You cannot tell?

A. No, sir. I do not think I was in the store business then. I think I had sold it out before that.

Q. Well, you were not then in business as a storekeeper at all at Morgan City on October 12th, 1883?

A. No, sir; I kept the ice business there.

Q. You kept the ice business there alone?

A. Yes, sir.

Q. And did no other business, you say?

A. Did a contracting business; yes, sir—that is, not a commercial business. I did a contracting business.

Q. But I mean did you deal in merchandize. You were not dealing in merchandize at the time? You were not in the liquor business then, were you?

A. No, sir; I was not in the liquor business then. I did not do a liquor business at that time.

Q. Then I understand you to say that you kept no books at the time of this transaction.

A. How's that?

Q. I say that I understand you to say that you kept no books at the time of this transaction except that you put down when your notes would come due.

309 A. No, sir. I kept my private account, you know. I draw so much from the bank, deposit so much, and put in my bills payable what I draw out; my note book.

Q. You made no note of having a loan of fifteen thousand dol-

lars on these goods in any books that you kept; didn't put that down—that you made this loan of fifteen thousand dollars ($15,000)?

A. I put down that I have given my promissory notes for five thousand dollars ($5,000) each and put down when they became due.

Q. And charged your cash anything—did you charge your cash anything to show the five thousand dollars ($5,000) you gave him in cash? Did you make any memorandum of it?

A. I gave the bank credit for five thousand dollars ($5,000); I gave the bank credit for that amount.

Q. But you did not say who got it?

A. Yes, sir; I said who got it—Lehman Meyer.

Q. In your check book?

A. Yes, sir; in my check book.

Q. Where is your check book now?

A. I have got it.

Q. You produced the checks, I believe, in court before?

A. Yes, sir.

Q. Showing that they were drawn?

A. Yes, sir. I produced them in court before showing that they were drawn.

310 Q. Did it cause you no surprise that Mr. Meyer, who had a big store—had a store on Tchoupitoulas street—found it necessary to store these goods at Meyer Weill and Co.'s? Did that cause no surprise to you at all?

A. No, sir; he had in his store moss and such things as that, and I didn't think he had the room.

Q. At that time was his store at all full?

A. I did not notice particularly whether it was or not.

Redirect examination by Mr. BROWNE:

Q. Mr. Ermann, how much of this money—fifteen thousand dollars—loaned Lehman Meyer has been returned to you by him?

A. By him?

Q. Yes.

A. Not a dollar.

Q. Has any of it been returned from any source except the sale of those goods?

A. Has any of it been returned outside of that?

Q. Yes.

A. No, sir; not a dollar; not a dollar, sir.

Q. If these goods should be taken away or their proceeds taken away from you by the proceedings that are now pending what understanding or agreement or contract is there between you and Lehman Meyer or Joseph Dreyfus or anybody else——

A. What contract?

Q. To refund this money which you have loaned on these
311 goods. What contract is there?

A. Nothing whatsoever with either of those gentlemen that you mention.

Q. Or with anybody?

A. With nobody. I have no contract with anybody.

Q. So that it will be an actual loss to you of fifteen thousand dollars ($15,000), besides your expenses, court expenses, and lawyers' fees, should you lose this suit—these suits?

A. Yes, sir. I can't see any other source or chance of getting a dollar back. I don't see any chance of it at all.

Q. You are charged, Mr. Ermann, in this bill and in the other bills with conspiring and confederating with Lehman Meyer and Joseph Dreyfus to defeat the creditors of Joseph Dreyfus in obtaining their just rights against him by this pledge that you hold. What have you to say to that? What answer have you to make to those charges?

A. Well, all I have to say to that is that it is very wrong and unjust that I should be placed under the heading with Dreyfus' affairs; that I had nothing at all whatsoever to do with it, and I am as innocent of anything of that kind as I was on the first day I was born. That's all I have to say to it. I certainly, had I known anything about that affair, would never have had anything to do with it. I would never have entered into the arrangements with Mr. Meyer that I did. I consider—I swear that if I had had the slightest idea I never would have done it. You may take it as you want, but you may believe that if I had the slighest idea or would
312 have heard before of the failure of Joseph Dreyfus or if Meyer would have come to me and said, "I have got these goods," I would not have touched it, because I would have thought that he might have got those goods from Joseph Dreyfus. I would swear that on a stack of Bibles. I would swear on a stack of Bibles, I don't care how high they were. I hope I may have my neck cut off if I knew anything about it. Had I been living here in the city, you know, it might have been different. If I had stopped somewheres else, not stopping at Joseph Dreyfus', perhaps I would have heard something of it, but, as it happened, I did not. It was my home when I came to the city. If I am accused of being in cahoot with these men it is very wrong.

By Mr. LABATT:

Q. Then this transaction, this loan and pledge of yours—pledge of Lehman Meyer to you for the loan to secure the loan—was it a fraud and a sham or was it a *bona fide* transaction?

A. It was a real transaction, just as real as if you wanted from me on my check five hundred or seven hundred dollars for thirty days, and I gave you the money, and when the notes became due I expect to get it or by a special request to hold it thirty days longer. That is just the transaction I made with Lehman Meyer.

A. McGuirk, being sworn, says that he, as stenographer, took the foregoing evidence and reduced the same to writing, and that he has no interest in the result of the suit in which the same was taken.

(Signed) A. McGUIRK.

Sworn to and subscribed before me this 1st August, 1884.
(Signed) J. DEVONSHIRE, *U. S. Com'r.*

313 *Cross-Examination of Abram Ermann by Mr. Phillips. Offered by Defendants and Filed 30 Nov'r, 1885.*

United States Circuit Court, Eastern District of Louisiana.

H. WEILLER & Co. *et al.*
vs.
JOSEPH DREYFUS *et als.*

NEW ORLEANS, *May* 13, 1885.

On this day, at 3 o'clock p. m., before A. G. Brice, special
314 examiner, there being present R. H. Browne, Esq., the solicitor for defendants, and A. B. Phillips, Esqr., solicitor for E. Dubois, a complainant—

Mr. ABRAM ERMANN was specially recalled for cross-examination.

By Mr. PHILLIPS:

Q. You are acquainted with Joseph Dreyfus?
A. Yes, sir.
Q. How long have you known Joseph Dreyfus?
A. About fifteen or eighteen years.
Q. You were an intimate friend of Dreyfus?
A. Yes, sir; I was intimate with him.
Q. Were you at Joseph Dreyfus' house on the 28th October, 1883?
A. Yes, sir.
Q. What time did you arrive at his house?
A. I arrived at his house about—early—six o'clock.
Q. In the morning or evening?
A. In the evening.
Q. How late did you remain there?
A. I remained there all night.
Q. Did you sit on the gallery at any time that Sunday evening?
A. No, sir.
Q. Were you on the gallery that Sunday evening at any time?
A. The only time I was on the gallery was while I was entering the house.
Q. Did you sit down on the gallery with anybody?
A. No, sir.
315 Q. Did you not see the Gumbels there?
A. I don't remember whether one of the Gumbels was there or not; I am not positive.
Q. Were you not walking up and down the gallery with one of the Gumbels?
A. No, sir.
Q. Were you around at Dreyfus' store that Sunday night?
A. No, sir.
Q. At no hour?
A. At no hour.

Q. You did not know of goods being removed from Dreyfus' store after twelve o'clock that night?
A. No, sir.
Q. Did you see Dreyfus at any time that night?
A. No, sir; I did not.
Q. How late did you go to bed that night?
A. About nine o'clock, as near as I can remember.
Q. At nine o'clock?
A. Yes, sir.
Q. You had no conversation with Dreyfus that night?
A. None whatever.
Q. Did you see his son-in-law, Lehman Meyer?
A. Yes, sir.
Q. What time was it that you saw him?
A. I saw him on my arrival there.
Q. At six o'clock.
A. Yes, sir.
316 Q. Did you have a conversation with him?
A. Yes, sir.
Q. How long were you both together?
A. We were together until I retired.
Q. From six o'clock to nine?
A. Yes, sir.
Q. Did he tell you whether he was going to Dreyfus' store?
A. No, sir; he did not tell me anything.
Q. Did he tell you he was going to remove the goods of Joseph Dreyfus to Meyer Weill's store?
A. No, sir.
Q. He never told you that?
A. No, sir.
Q. Then when you arrived Sunday night you heard nothing of the failure of Dreyfus?
A. No, sir.
Q. Did you see the newspaper that Sunday evening?
A. No, sir.
Q. Did you not see any commotion by the family in the house?
A. No, sir; only I inquired for Mr. Dreyfus, and they told me he was upstairs with his wife, very sick. That is the only commotion that I noticed in the house.
Q. Lehman Meyer did not tell you that he had failed at all?
A. No, sir.
Q. And you an intimate friend of the family?
A. No, sir; he did not. I wish he had told me.
317 Q. Were you not in town on Saturday at all?
A. No, sir.
Q. You had not arrived at all?
A. No, sir.
Q. Your first arrival was on Sunday?
A. Sunday evening.
Q. At six o'clock?

A. Yes, sir; I arrived here about a little after five and came up to the house about near six.

Q. You say that you saw a Mr. Gumbel there that Sunday evening at six o'clock?

A. I say I don't remember seeing him.

Q. I asked you if you saw one of the Gumbels, and you say you saw one.

A. I don't remember whether he was there or not.

Q. I wish you would remember and state whether you saw one of the Gumbels there that Sunday evening.

A. I cannot remember.

Q. Did you see any of the three Gumbels that Sunday evening at all?

A. Not that I can remember.

Q. Did not Lehman Meyer tell you anything with regard to moving these goods to Meyer Weill's store?

A. Nothing whatever.

Q. Did he tell you that Sunday evening that he wanted to borrow any money?

318 A. Yes, sir.

Q. What did he tell you?

A. He told me he wanted to borrow some money from me.

Q. How much?

A. He needed about $15,000.

Q. Did he tell you on what he wanted the money?

A. Yes, sir.

Q. On what?

A. He told me that he had a lot of goods in the warehouse which he would pledge—that he had $20,000 worth of goods that he would pledge.

Q. Did he tell you where the goods were?

A. No, sir; he did not. He told me they were in the warehouse.

Q. Did he tell you whose warehouse it was?

A. No, sir; not that night.

Q. You asked him whose goods they were?

A. No, sir; I did not.

Q. Did you ask him whether the goods belonged to him?

A. No, sir; he told me he had $20,000 worth of goods. If so, they belonged to him.

Q. Do you know of your own knowledge that he owned $20,000 worth of goods that Sunday night?

A No, sir; I did not know what he owned. I know he done a great deal of business.

Q. Did you not also know of the failing circumstances of Lehman Meyer on the 28th October, 1883?

319 A. No, sir; I did not.

Q. Did you not visit his store before that?

A. When I came to the city I visited his store.

Q. Where was his store at?

A. No. 5 Tchoupitoulas street.

Q. That is right on the point of Canal street—a little store there on Tchoupitoulas near Canal street?

A. I think so; it is not the corner, but next to the corner.

Q. It was a very small room, however?

A. No, sir.

Q. Would not this room make two of it?

A. No, sir.

Q. How many rooms would this make of his?

A. His place was larger than this.

Q. When were you there in his store?

A. I was in his store on Monday morning.

Q. That Monday morning, the 29th, after this occurrence?

A. Yes, sir.

Q. Were that the first time you were in his store?

A. I was in his store whenever I came to the city.

Q. I want to know when you were there before.

A. Whenever I came to the city I went to his store. I don't remember when I came.

Q. A week or two before this failure of Dreyfus were you in his store?

A. I don't know whether I was in the city a week before
320 that or not.

Q. Were you there a month before?

A. I cannot say whether I was here a month before or not.

Q. Now I will come back to Monday. On Monday when you went to his store did you find any $20,000 worth of goods there?

A. No, sir; not in his store.

Q. What did you find in his store?

A. I found in his store some moss, etc.

Q. I mean to the value of how much.

A. I did not judge.

Q. Hardly anything in his store?

A. No, sir; not much in the store, because he was doing a commission business.

Q. That was Monday, the 29th October?

A. Yes, sir.

Q. And you say you cannot tell how many months before this transaction you were in his store?

A. I cannot say; only I went into his store whenever I came to the city.

Q. How long was that before this transaction?

A. I cannot say. I cannot say when I came to the city before that.

Q. One, two, three, or four months, about?

A. No, sir; it is three or four years ago when I came to the city then, and I cannot remember.

Q. Do you know that Mr. Lehman Meyer failed here after Dreyfus or before Dreyfus?

321 A. I remember that he could not pay any more after Dreyfus failed. I believe it was in December, if I am not mistaken.

Q. Did he call for your assistance then?
A. When he failed?
Q. Yes, sir.
A. No, sir.
Q. You say that you had a conversation with him on Sunday night?
A. Yes, sir.
Q. About loaning him $15,000 on $20,000 worth of goods?
A. Yes, sir.
Q. What was your answer in regard to that request?
A. I told him if I could assist him in letting him have that money that I would do so if I could.
Q. You did not give him a decided answer, then?
A. No, sir.
Q. Did you tell him that you would go and examine the goods before you would loan him the money?
A. No, sir; I did not.
Q. Was he doing a commission at the time he asked you for the money?
A. Yes, sir.
Q. When did you see Mr. Meyer again?
A. I saw Mr. Meyer the next morning after, after I had retired that night.
Q. That is, Monday morning?
A. Yes, sir.
Q. What time?
322 A. As near as I can recollect, about seven o'clock he came to my room.
Q. Did Mr. Meyer live in the same house with Dreyfus?
A. Yes, sir.
Q. Did you not receive a note from Meyer to come down on Sunday?
A. Not that I can recollect.
Q. I would like you to refresh your memory.
A. I cannot remember. That question was asked me before, and I could not recollect it.
Q. Do you swear positively that you did not get a note?
A. I cannot recollect whether he sent me a note or not. In other words, I cannot recollect of receiving a note from him.
Q. You solemnly swear that you received no note from Meyer to come down Sunday night a day or two previous. That was on Thursday or Friday?
A. I swore that I would testify to the truth as far as I could recollect in telling the same. That is all I can say.
Q. I repeat: Do you solemnly swear that you received no note from Meyer to come down Sunday night, a day or two previous? That was on Thursday or Friday?
A. I don't recollect that I received a note from Mr. Meyer.
Q. You might have received one and you don't recollect it. Is that it?
A. I don't recollect of receiving one.

Q. Where did you have the conversation on Monday morning?

A. That conversation we had going down in the cars.

323 Q. Did you hear nothing, then, on Monday morning about the failure of Dreyfus?

A. Nothing whatever.

Q. He did not tell you?

A. No, sir.

Q. And your friends did not tell you?

A. I did not see anybody else while I was in company with Meyer, and therefore I did not see any other friends. I wish I had.

Q. Did you see any of the Gumbels at all on that Monday?

A. No, sir.

Q. You have already stated that you did not hear that Sunday?

A. Yes, sir; I have.

Q. Where did you go as you walked down with Meyer?

A. I went down in the car; I did not walk.

Q. Where did you stop at?

A. I went to Canal street, and from there we walked over to his store.

Q. What did you see in his store while you were there?

A. I did not take particular notice.

Q. Was there much in his store?

A. No, sir; there was not a great deal in his store.

Q. Did you see anything else besides moss in his store?

A. There were some other packages at that store that I did not examine.

Q. Now, when you went to his store did you ask him on what security he was wanting this $15,000?

A. Yes, sir.

324 Q. Was anybody present?

A. No, sir.

Q. Did you ask him then whose goods they were?

A. No, sir.

Q. Did you ask him where the goods were?

A. Yes, sir.

Q. Where did he say they were?

A. He pulled the documents out of his pocket—they were in an envelope—and he showed me the warehouse receipts. He said "Here are the warehouse receipts. I have got that much goods stored at Mr. Meyer Weill's warehouse." There are the very documents which Mr. Browne produces to me here.

Q. Do you know in whose handwriting the top part of these receipts is that are here produced?

A. No, sir.

Q. Is that Mr. Lehman Meyer's handwriting?

A. No, sir; I cannot say. I did not see him writing it.

Q. Do you know whose handwriting the bottom is?

A. I only identify that signature.

Q. Of Meyer Weill?

A. Yes, sir.

Q. You don't know the balance?

A. No, sir.
Q. You never went to examine these goods?
A. No, sir.
Q. You did not go to Meyer Weill's warehouse to look at them?
A. No, sir; not that Monday.
325 Q. You loaned him $15,000 upon these documents?
A. Yes, sir; upon those documents.
Q. Did you give him the $15,000 in cash?
A. No, sir.
Q. Why did you not give him the $15,000 in cash? Did he not ask for it?
A. Yes, sir; he asked me for $15,000, and I told him I could not give him $15,000 in cash. I could not spare the money at the time.
Q. And he took how much?
A. I offered him $5,000, and I made two promissory notes for $5,000 each.
Q. When you paid this $5,000 was it by check or in cash?
A. A check.
Q. On what bank?
A. I don't remember now.
Q. You don't recollect on what bank you drew the check?
A. No, sir.
Q. And the balance you say was in two notes, made payable to your own order, or were they payable to his order, which?
A. I think they were made payable to his order, as near as I can recollect.
Q. You think they were payable to his order?
A. Yes, sir.
Q. Drawn by you and endorsed by him if payable to his order?
A. Drawn by me and endorsed by him. I think so.
326 Q. What has become of these notes?
A. I have got them back after I paid them.
Q. Have you got them now?
A. I don't know whether they are among the documents here or not.
Q. Did you not ask for Dreyfus when you arrived that Sunday night?
A. Yes, sir.
Q. Where did they say he was?
A. They told me he was upstairs with his wife. She was very sick.
Q. You did not see Dreyfus at all then?
A. No, sir.
Q. Were you a merchant at the time you loaned this money?
A. Yes, sir.
Q. Doing business where?
A. At Morgan City.
Q. You kept books up there?
A. Yes, sir; I kept books.
Q. Had you not the entry on your books of this $15,000?

A. Yes, sir.
Q. You have disposed of these goods, have you not?
A. Yes, sir.
Q. What have you realized out of this $20,000 worth of goods?
A. Well, I have not made a full settlement of it, because a great deal of it has not been paid to-day.
Q. You have not made a settlement, you say, of the amount yet?
327 A. Of the proceeds, I have not.
Q. Since 1883?
A. Yes, sir; because several of the goods are not paid for to-day yet, so that I cannot say what I will realize out of it.
Q. How much interest was Mr. Meyer to pay you for the loan of that $15,000?
A. He paid me a commission of 2½ on $15,000.
Q. He paid you a commission 2½ on $15,000?
A. Yes, sir; on $15,000.
Q. Did you deduct that out of the $15,000?
A. No, sir.
Q. Where was that 2½ per cent. commission paid?
A. I got it after I gave him my check.
Q. You gave him a check for $5,000?
A. Yes, sir; and he gave me cash.
Q. That is 2½ per cent. on the whole $15,000?
A. Yes, sir.
Q. On which he had not realized yet on the whole $15,000?
A. Yes, sir.
Q. So he paid you in advance?
A. I do not call it in advance. When a transaction of that kind is done, you get your commission on the amount whether it is cash or not cash. If I advance a planter $6,000 I take out my commission on the $6,000 and the planter draws the money as he wants it.
Q. Did you not swear some years ago in open court that
328 you did not charge any interest on this money?
A. I don't think I did. I don't recollect whether I swore to it at that time; I swore to the fact, whatever it was.
Q. Do you not recollect swearing that you did not charge him any interest, that you done the whole thing as a favor to a friend?
A. No, sir; I don't recollect.
Q. How long did you stay in the city on Monday?
A. I stayed in the city until twelve o'clock.
Q. Twelve o'clock in the day?
A. Yes, sir; noon.
Q. You left then?
A. Yes, sir.
Q. You heard nothing then of the moving of the goods or the failure of Dreyfus?
A. I heard of the failure before I left.
Q. Did you go back to Lehman Meyer after you found that out?
A. No, sir; I could not find the time.
Q. Did you go and ask him if those were tne same goods?

A. No, sir; I did not.
Q. You did not take any interest in the matter at all?
A. No, sir; I did not think there was anything wrong. I never dreamed of the goods coming from Mr. Dreyfus, by any means.
Q. You never did loan as much money to Lehman Meyer before for any warehouse receipts?
A. No, sir.
329 Q. This is the first transaction you ever had with him of that kind?
A. Well, similar to that it —; yes, sir; it is the first, but I used to loan him money when he became a speculator in cow-peas; several thousand dollars at a time.
Q. But I mean on warehouse receipts?
A. No, sir; I never did; that is the first time he ever required such a large amount.
Q. But I mean you never done it on so large a scale with him?
A. No, sir.
Q. What time did you go to Meyer Weill's store on Monday?
A. I did not go to Meyer Weill's store at all.
Q. I thought you said you went there?
A. No, sir.
Q. When did you go to Meyer Weill's store?
A. I went to Meyer Weill's store after I came back Wednesday—when I heard that the goods were seized.
Q. How did you come from Morgan City on Wednesday?
A. I came by a special locomotive.
Q. Did you pay for the use of that locomotive?
A. Yes, sir.
Q. What did you pay?
A. I paid $125.
Q. Did you take any steps with regard to this seizure when you came down?
A. I came down on the locomotive specially to take steps to protect my goods.
330 Q. Where did you go when you came here—did you go to Dreyfus' house?
A. No, sir; I did not go to Dreyfus' house.
Q. You did not seek Mr. Meyer, then, at all?
A. Well, I saw Mr. Meyer on Wednesday. I think I came down Tuesday, but not in time to take any steps, because all the offices and the courts were closed.
Q. You came down Tuesday on the locomotive?
A. Yes, sir.
Q. What time did you arrive here on the locomotive?
A. When I got in town here it was about three o'clock.
Q. Where did you go to then?
A. Then I went to Meyer Weill's store.
Q. Direct?
A. Yes, sir.
Q. Whom did you see there?
A. Mr. Meyer Weill.

Q. What did you say to Mr. Meyer Weill?

A. I asked him what was the matter with those goods, and I showed him I was the owner of the goods; that I held the warehouse receipts, and I asked him what was the matter. He said he did not know that the goods were seized.

Q. This is the first time you went to Meyer Weill's and informed him that you were the owner of these goods; that was on Tuesday after three o'clock?

A. Yes, sir.

Q. Did he tell you that he knew you were the owner of
331 these goods?

A. No, sir; he did not tell me.

Q. Was he surprised that you were the owner of these goods?

A. No, sir; he was not surprised.

Q. How long did you stay there with Meyer Weill?

A. I don't recollect how long I stayed there; I stayed there quite awhile.

Q. How many hours?

A. I don't know.

Q. Were you there more than three hours?

A. No, sir.

Q. Were you there three hours?

A. No, sir; I don't know how long; whether it was an hour or an hour and a half. I cannot say.

Q. Where did you go after you left Meyer Weill?

A. I don't remember where I went then.

Q. Where did you sleep that night?

A. At the Cosmopolitan.

Q. Why did you not go to Dreyfus' house?

A. Because he was in trouble and I did not like to go there.

Q. You did not look for Lehman Meyer that night at all?

A. I looked for him, but I could not see him until next morning.

Q. Who took you to Messrs. Singleton & Browne?

A. Nobody took me there.

Q. Did not Meyer Weill take you there?

A. No, sir; I went there by myself; but I met Mr. Weill at the office of Singleton & Browne. I asked Mr. Weill for a good
332 attorney and he said he would recommend me to Singleton & Browne, his lawyers, also. I went to Singleton & Browne's office and there met Meyer Weill. If I am not mistaken, I was talking to Mr. Browne on the subject when Mr. Weill came in.

Q. You knew you say on Monday when you left here to go home that Dreyfus' goods had been removed from his store?

A. No, sir; I was told that he was bursted, but I did not know anything about the removal of the goods.

Q. You did not know it at that time?

A. No, sir; not until I came back on Tuesday.

Q. Did you not hear of it from Meyer Weill?

A. No, sir.

Q. Did he never tell you that these goods came from Mr. Dreyfus' store?

A. No, sir.

Q. While sitting down there for about an hour and a half you did not have any conversation about that?

A. No, sir; he never told me a word about it.

By Mr. BROWNE:

Q. Were you at any time on Sunday night on Gravier with either or all three of the Gumbels?

A. No, sir; I did not go out of the house after nine o'clock; not until next morning.

Q. William Stern says in his testimony that you were with the three Gumbels on Gravier street between Tchoupitoulas and
333 Magazine streets between the hours of half past eleven o'clock that night and one o'clock the next morning.

A. It is not true; it is impossible; I went to bed at nine.

Q. I understood you to say that you had often loaned Lehman Mayer money before this time?

A. Yes, sir.

Q. Now, when Lehman Meyer asked you to loan him this money he was doing business, you say, at No. 5 Tchoupitoulas street?

A. Yes, sir.

Q. Did he have any other business?

A. Yes, sir; he had a plantation, and he had a store in Thibodeaux.

Q. What stock did he carry in Thibodeaux?

A. He carried a stock there of about $12,000 or $15,000.

Q. Why did you not go and examine the goods that Monday morning upon which Lehman Meyer wanted to borrow this money?

A. Well, I did not go and examine the goods because Meyer had never misrepresented anything to me in all the transactions that I had with him, and after he gave me this pledge that the goods were there, and these warehouse receipts, I was positive that they were there, and because Mr. Weill would not sign a receipt unless he has the goods that he receipts for.

Q. How much cash have you really realized this far from these goods, or do you know?

A. I cannot say exactly.

Q. Can you not come within $1,000 of it?

334 A. No, sir; by going over my books I can tell how much cash I realized from them, but from memory now I cannot tell; I could have brought a memorandum easily enough.

Q. Do you know anything at all about Meyer's plantation; what kind of a place it is?

A. It was a pretty large-sized place.

Q. What was your confidence in Lehman Meyer?

A. I always had full confidence in him as a good, honest man.

Q. And also at the time you made this loan?

A. Yes, sir; if I had not I would not have made the loan.

Q. What is your confidence in him now?

A. Well, not so much as it was, by a long distance.

335 *Testimony Offered by Defendants.*

United States Circuit Court, Eastern District of Louisiana.

H. WEILLER
vs.
JOSEPH DREYFUS *et als.* } In Equity. No. 10521.

Testimony taken on behalf of the defendants, under the 67th rule, as amended, of the courts of equity of the United States, before A. J. Brice, Esqr., special examiner, duly appointed and qualified, to take the depositions of witnesses in the above-entitled cause.

NEW ORLEANS, *March* 20, 1885.

Present: R. H. Browne, Esq., solicitor for defendants; David C. Labatt, Esqr., solicitor for complainant.

It is hereby agreed by the respective solicitors that the testimony of this witness, and of other witnesses taken before the examiner, may be used in each and all of the cases against Joseph Dreyfus *et als.*, defendants. This agreement applies to the testimony which may be taken on behalf of the complainant or on behalf of the defendants, all legal objections to testimony being reserved.

336 LEHMAN MEYER, a witness produced, sworn, and examined on behalf of the defendants, deposes and says:

By Mr. BROWNE:

Q. You are one of the defendants in the cause of H. Weiller *et als.* against Joseph Dreyfus *et als.?*

A. Yes, sir.

Q. What relation are you to Joseph Dreyfus?

A. I am his son-in-law.

Q. Where did you reside in the month of October, 1883?

A. At No. 324 Josephine street, in the city of New Orleans.

Q. With whom did you reside there?

A. With Mr. Joseph Dreyfus.

Q. How long had you resided with him?

A. I had resided with him about a year and a half previous to that time.

Q. Were you in business here at that time yourself?

A. Yes, sir; I was.

Q. When did you suspend payment, or when was your commercial paper protested?

A. I believe it was some time in January, 1884.

Q. Was it in January, 1884, or December, 1883?

A. I believe I paid up some money in January. If I could see my books I could tell. It was either in the latter part of December, 1883, or the beginning of January, 1884. I do not remember which.

Q. What was the cause of your failure?

337 A. Well, bad business and heavy losses that I had the year previous; and troubles, having endorsed for parties who failed.

Q. What business relations did you have with Joseph Dreyfus?

A. I had no business relations with him.

Q. What claims, if any, did you have against Joseph Dreyfus at the time of his failure?

A. He owed me some money which I loaned him.

Q. How much money did he owe you?

A. $26,000 and some odd.

Q. When did you ask him for it?

A. I demanded the money of Mr. Dreyfus some time in October.

Q. What did he say?

A. He said he would get some money in and he was going to pay me.

Q. What kid you do then?

A. The money did not come forward, and he proposed to sell me some goods for the amount. At first I would not accept of the goods. I told him that the goods would not give me money, that I needed money.

Q. About when was it that he made this proposition to you?

A. That was some time about the 20th of October, 1883.

Q. What did you do then?

A. I waited a few days, and finally, as I was in need of money very badly and had to have it, I bought the goods from him. I bought the goods on Friday, October 27th, I believe.

Q. When were the goods to be delivered?

A. On Saturday morning I was to take the goods away.

Q. Why did you not take the goods away on Saturday morning?

338 A. The reason I did not take the goods away at that time was this: I went to Meyer Weill, who is a friend of mine, and told him that I wanted to store some goods in his warehouse and wanted to store them there to-morrow. That being Friday, I said I wanted to store the goods in his warehouse on Saturday. And he said, "To-morrow you cannot store goods with me; my store will be closed; but after Saturday midnight you can have the key of my store."

Q. Why did you want to store them at Meyer Weill's warehouse?

A. Well, so that I could take his warehouse receipts and raise money on them.

Q. After you could not get the keys of Meyer Weill's store on Saturday, what did you do?

A. I removed the goods. At least I did not remove the goods, but Mr. Dreyfus delivered the goods to me on Sunday morning, which I stored at Mr. Weill's warehouse.

Q. Why did you do it on Sunday morning?

A. The reason I started early in the morning was, because I was ready to go to Thibodeaux that morning at half past seven o'clock by the Morgan railroad, and I started soon in the morning in order to get through and go and attend to my business.

Q. What time was it that the delivery of the goods begun?
A. I think it was from half past one o'clock to two when I received the first load at Meyer Weill's warehouse.
Q. How many loads were delivered before daylight?
A. Three loads.
339 Q. When was the balance of them delivered to you?
A. After daylight.
Q. When was the last of them delivered to you on Sunday?
A. About eleven o'clock on Sunday. Then the marshal stopped them.
Q. Were you at the store of Joseph Dreyfus on Saturday night when this delivery commenced or where were you?
A. I was at Meyer Weill's store to receive the goods.
Q. When were these goods separated or set apart for you by Joseph Dreyfus?
A. He began on Friday. As soon as I bought the goods from him he began to pick them out to deliver them.
Q. What was the amount of the goods that you were to receive?
A. Nearly $20,000.
Q. Why did not the delivery continue on Saturday night after it had begun?
A. Well, the draymen were prevented by the police stating it was against the city law.
Q. After you had stored these goods in that warehouse what did you do with reference to getting the receipts for them?
A. I got my warehouse receipts from Mr. Meyer Weill, and I raised some money on them.
Q. Are these the warehouse receipts?
A. Yes, sir.

Mr. Browne, for defendant, introduces and files in evidence
340 the five warehouse receipts described as given by Meyer Weill to the witness.

Q. When were these receipts delivered to you by Meyer Weill? What time of day was it?
A. They were delivered to me on Sunday night.
Q. Is that the invoice of the goods that you refer to?
A. Yes, sir; that is the invoice of the goods I refer to.

Mr. Browne, for the defendant, introduces and offers in evidence the invoice of the goods covered by the above five warehouse receipts given for the goods by Meyer Weill.

Q. How long have you known Mr. Erhmann, one of the defendants here present?
A. I know Mr. Erhmann for the last ten years.
Q. Upon what terms has he been with the family of Joseph Dreyfus and yourself?
A. On very friendly terms.
Q. Has he been in the habit of staying at any particular place?
A. Yes, sir. Since I have been residing with Mr. Dreyfus, when-

ever Mr. Erhmann came to town himself or with his family he always stopped at Mr. Dreyfus' house.

Q. Was Mr. Erhmann in town that Saturday night?

A. No, sir.

Q. Where did he live?

A. In Morgan City.

Q. Was he a man of small or of considerable means?

A. He was a man of means at that time. I do not know what he has to-day.

341 Q. When did he arrive in town?

A. He arrived here on Sunday evening.

Q. About what time?

A. He came to No. 324 Josephine street at about half past five in the evening. It was on October 28th.

Q. That was Joseph Dreyfus' house?

A. Yes, sir; No. 324 Josephine street was Joseph Dreyfus' house.

Q. What did he do that evening?

A. I put in right away for business with him.

Q. What did Erhmann do that evening—did he go out or stay in?

A. No, sir; he stayed in the house all the evening. We were pretty much together, myself and he, until we went to bed.

Q. Where was Joseph Dreyfus himself?

A. Joseph Dreyfus was in his room.

Q. How was the health of Mrs. Dreyfus?

A. Mrs. Dreyfus was sickly at the time. She did not feel well. She had the diabetes for some time before that.

Q. Who was there after Mr. Erhmann came?

A. Who was at the house?

Q. Yes.

A. I did not see anybody except Mr. Erhmann.

Q. Were not the Gumbels there?

A. No, sir.

Q. None of them?

A. None of them.

Q. What did you desire Mr. Erhmann to do?

342 A. I desired to get some money from Mr. Erhmann. I told Mr. Erhmann that I wanted some money from him and that I would give him good security, and I would show him the papers which I had in a few minutes afterwards—the warehouse receipts. I asked him for $15,000, which he concluded the next morning to give me.

Q. Did Erhmann agree with you that night?

A. No, sir; not that night—not until the next morning, when he concluded to give me the $15,000.

Q. What time next morning was the contract closed?

A. About seven o'clock in the morning.

Q. What did Erhmann do in the way of advancing money to you? How did he advance it to you?

A. He paid me in part cash; he paid me $5,000 in cash and two notes for $5,000 each.

Q. Payable at what time?

A. At sixty and ninety days after date.

Q. What did you do to secure him?

A. I gave him my note for $15,000 and the warehouse receipts as collateral.

Q. Are these the two checks that Erhmann gave you for the money as a cash payment?

A. Yes, sir; they are.

Mr. Browne, for the defendants, introduces and offers in evidence two checks drawn to the order of L. Meyer and endorsed by him for $2,500 each, and each dated October 28, 1883.

343 Q. Are these the two notes that Mr. Erhmann gave you?

A. Yes, sir; they are.

Mr. Browne, for the defendants, introduces and offers in evidence the two notes referred to, in connection with the warehouse receipts and all the endorsements thereon.

Q. What had been the standing of Joseph Dreyfus in this community as a merchant before this difficulty?

A. He was in very high standing.

Q. What knowledge did you have, at the time you made this transaction with him, of his being solvent or insolvent?

A. From the knowledge I had he was solvent, and I considered him rich.

Q. Did you have any conversation or hear of any conversation between him and other parties with reference to offers of assistance to him?

A. Yes, sir; during that week of October—that was some time about the 24th or 25th October—a party offered to give him some money if he should be in need.

Q. Who was that party?

A. Mr. Marinoni. That offer was made in my presence—$15,000 for a mortgage on his house.

Q. Do you know of your own knowledge why Mr. Marinoni made that proposition to him?

A. Yes, sir. He came to Mr. Dreyfus—I was present at the time—and he said, "There is something wrong about you, Mr. Dreyfus; people came to me and offered me your paper for sixty-six
344 cents on the dollar, and if that is the case there must be something — about you; tell me if there is anything I can do for you;" and Mr. Dreyfus told him, "There is nothing needed now. I have paid up some money and whatever becomes due I will be able to pay."

Q. So he declined the offer of Marinoni?

A. Yes, sir.

Q. What knowledge did you have of Joseph Dreyfus executing a mortgage on his property that Saturday evening?

A. I had no knowledge.

Q. What knowledge did you have?

A. None; I did not know anything about it.

Q. Had Dreyfus suspended at the time this transaction with you was made?

A. No, sir; he was not under protest.

Q. What suits, if any, were pending against him at that time?

A. None.

Q. What knowledge had you of any paper extended by him at that time?

A. I did not have any knowledge at all.

Q. Why did you press Mr. Dreyfus, your father-in-law, for that money?

A. Because I had need of it. I had some money.

Q. What was your opinion of Mr. Dreyfus' solvency at that time?

A. On Friday, when I accepted his proposition to buy the goods from him, I made up my mind to do it and did close the bargain. When I heard that his papers were offered at the dif-
345 ferent places at so much I then accepted the proposition to take the goods. There was a fellow by the name of Stern who used to go around all over with his paper offering it for sale, drawn at sixty and ninety days, which was not then due.

Q. When had Erhmann been here before that Sunday?

A. I don't know. I cannot recollect.

Q. Had he been in town recently?

A. No, sir; he had not. I don't believe I saw him for some time before that.

Q. You knew that Mr. Dreyfus on Sunday morning was in trouble?

A. Yes, sir.

Q. Seizures were made on Saturday night?

A. The seizure was made Sunday at about eleven o'clock.

Q. Did you know he was in trouble on Sunday?

A. Yes, sir.

Q. What information did you give Erhmann of that?

A. I did not tell Mr. Erhmann anything about it. I told Mr. Erhmann I needed $15,000 and had got $20,000 worth of goods to secure him.

Q. What did Erhmann ask you, or did he ask you anything, about where these goods came from?

A. I don't believe he did. I don't know now. I cannot recollect.

Q. You say that you and Erhmann had been on good terms heretofore for a long while?

A. Yes, sir.

346 Q. Did Erhmann in any manner ever befriend you before?

A. Yes, sir; I had some money before from Mr. Erhmann.

Q. Of a larger or smaller amount?

A. Of a smaller amount.

Cross-examined by Mr. LABATT:

Q. Where are you now residing?

A. In St. Louis.

Q. How long have you been residing there?

A. For about six months.
Q. Where is Joseph Dreyfus residing now?
A. In St. Louis.
Q. Do you live together there?
A. No, sir.
Q. Are you in business together there?
A. No, sir.
Q. What business are you in?
A. I am a salesman for the Western Distilling Co.
Q. What business is he in?
A. He is the manager of that business.
Q. How much salary does he get?
A. I don't know.
Q. How much salary do you get?
A. I get $150 a month.

Q. Who is at the head as owner of that establishment; is
347 it not a relative of Dreyfus?
A. His son-in-law.

Q. What is his name?
A. A. C. Stiebel.
Q. Yourself and Joseph Dreyfus have both removed with your respective families to St. Louis?
A. Yes, sir.
Q. Was Mr. Dreyfus' family—I mean his wife and your wife, or either of them—aware of the misfortunes which had fallen upon him on that Saturday night and Sunday?
A. No, sir.
Q. They were not aware of it?
A. They did not know anything about it.
Q. He never told them a word?
A. No, sir.
Q. He never told you about it either?
A. No, sir; I had to find it out Sunday morning.
Q. How did you find it out?
A. When the marshal came to the store.
Q. You were at the store then?
A. I don't know whether I was or not or at Mr. Meyer Weill's warehouse.
Q. Did you see the newspapers that Sunday afternoon; did you see the Item?
A. No, sir.

Q. You did not have that newspaper?
348 A. I did not see it.
Q. You did not see the article published on Sunday afternoon?

A. No, sir; I heard of that article.
Q. When did you hear of it?
A. I never saw it in the paper, but I heard of it.
Q. You heard of that article?
A. I heard there was an article in the paper, but I do not know whether this is it or not.

Q. Telling about the removing of the goods during the night?
A. Yes, sir; but I did not read the paper.

Mr. Labatt, for complainant, offers in evidence a slip cut from the "City Item" evening newspaper for the purpose of showing that there was such a publication printed therein.

(*Slip.*)

Midnight moving.

Part of the contents of a wholesale liquor store carried away.

United States marshal steps in and calls a halt.

The unusual spectacle of a merchant moving away a stock of goods in the dead of night could have been
349 witnessed by any chance passer-by on Tchoupitoulas street after 1 o'clock this morning. A wagon was backed up in front of No. 33 Tchoupitoulas street, and was being loaded with barrels of liquor and boxes.

The police inquired into the mysterious performance, and were informed by Mr. Joseph Dreyfus, the proprietor of the liquor store No. 33, above mentioned, that he was obliged to cause the goods to be taken away at that time of night to fill a pressing order.

Whilst the work was being done two gentlemen came up, one being Mr. Wm. Stern, the distiller's agent, who objected to Mr. Dreyfus's act, claiming that the latter was indebted to him to a large amount, and asking the police the [to] prevent the removal of the goods.

Sergeant Grabert, commanding the first precienct, and Deputy United States Marshal Dan. Rose were present during the conversation.

Mr. Dreyfus had already sent away three wagon
350 loads of stuff, but desisted when the police appeared.

Early this morning, before 9 o'clock, Mr. Stern, who is agent for a New York house, secured a writ of seizure from the United States circuit court and stopped further proceedings.

He sued out the writ as agent of Kerbs & Speiss, distillers, of New York, on the allegation that Dreyfus was indebted to them in the sum of $14,000.

Deputy Marshal Dan. Rose was placed in charge of the seized premises, and was there all day to-day. Other writs, taken by Anderson and by Haas, agents for Cincinnati houses, are expected to be served soon.

The goods taken away by Mr. Dreyfus were traced to Meyer Weill's store on North Peters street.

Q. You say that Mr. Dreyfus owed you $26,000 on the 25th October?

A. Yes, sir.

Q. How did that indebtedness originate—for how long a time had it been in existence?

A. Well, part of that was in existence for over a year or so.

Q. How much of it?

351 A. I suppose about $5,000 or $6,000.

Q. The balance had originated subsequent to that?

A. During the summer of 1883.

Q. You say it was money loaned to him?

A. Yes, sir.

Q. Had you ever asked him for it previous to the 28th October, 1883?

A. No, sir.

Q. You never had asked him for it?

A. No, sir.

Q. Was he paying you any interest on it?

A. Yes, sir; he was.

Q. How much interest?

A. At the rate of eight per cent.

Q. Was that agreement in writing?

A. No, sir.

Q. Did he ever pay you any interest on that money at any time; if so, when?

A. Not at that time.

Q. Just answer the question. Did he ever pay you any interest on that money? If so, when?

A. He paid me interest after he delivered the goods and settled with me.

Q. He paid you the interest?

A. Yes, sir.

Q. On the $26,000 after he delivered the goods?

352 A. Yes, sir; he paid me the interest from the date I loaned him the money.

Q. That is, after you had settled for the sale of the goods?

A. Yes, sir.

Q. How much in amount did he pay you as interest on that date?

A. I don't know; it was given in different installments. I did not give him the money all at once.

Q. But if he paid you interest on $26,000 I want to know how much?

A. He gave me the interest from the date I gave him the money. If I gave him the money on interest from April to October he paid me the interest from that time. I gave him the money at different times.

Q. You have just said that after he delivered you the $26,000 worth of goods that he paid you the interest on the money that he owed you.

A. He owed me $26,000, capital and interest, and he delivered to me $20,000 worth of goods.

Q. How did he pay you the balance?
A. I got papers afterwards.
Q. What papers?
A. Some notes.
Q. Whose notes?
A. Papers in Texas of different parties.
Q. Did you not have an arrangement by which you were to take the whole $26,000 in goods, only you were baulked by the seizure?
A. No, sir; I was to get $20,000 in goods.
353 Q. There was no arrangement, then, to pay you $26,000 and interest, but it was to pay you for both capital and interest.
A. I was to take from him goods for $26,000 on Friday, and I was to take them away on Saturday, and I could not remove them on Saturday, and I removed them Sunday morning, and when I got $20,000 the marshal stopped me.
Q. Then after that instead of taking the goods for the money *and* you took paper?
A. Dreyfus settled with me afterwards.
Q. How long was it after that that he made that settlement with you?
A. I don't know. A few weeks afterwards; probably two or three.
Q. Then he settled with you by paying you $6,000 two or three weeks after his failure?
A. Yes, sir; by notes.
Q. So you got the whole of your $26,000?
A. Yes, sir; I got the whole of my money.
Q. You say you bought goods from him to the extent of $26,000?
A. Yes, sir.
Q. Did you examine each article critically?
A. No, sir; but I knew. We had a talk of what goods he was to sell me.
Q. And he picked them out, did he not?
A. Yes, sir; and delivered them like anybody else.
Q. He picked them out. Had you any invoice, or did you put them down in a book, as you usually do when buying goods?
354 A. No, sir.
Q. What did you give up to him when you got the $26,000—what papers or receipts passed between you of any kind—what evidence of his indebtedness did you deliver to him to show the satisfaction of the debt?
A. I gave him a credit for it.
Q. Where?
A. In my books.
Q. You had, then, no evidence of this indebtedness of $26,000 at all in the way of notes or other evidence?
A. No, sir; I had no notes.
Q. You had no evidence of his indebtedness to you in your possession at any time of this $26,000 or any part thereof?
A. No, sir; it was just an open account.

Q. Did you believe that Mr. Dreyfus was telling the truth to Marinoni on the occasion of this conversation or not?
A. Yes, sir.
Q. You believed he was telling the truth?
A. Yes, sir.
Q. You believed he was solvent?
A. Yes, sir.
Q. Did you believe he would pay you in cash?
A. Yes, sir; I believed he was a rich man then.
Q. And that he would pay you?
A. Yes, sir.
Q. Why were you in such a hurry——
A. I was not in a hurry at all.
355 Q. To get your money on that night or to get your goods on that night or to get receipts that would enable you to raise money instead of holding the goods?
A. Because I needed my money.
Q. It was not on account of the danger of attachments at all that you heard were coming?
A. No, sir.
Q. You did not see them floating in the air at all?
A. No, sir.
Q. You did not hear of Mr. Sterns attaching them?
A. No, sir; he had no paper protested at that time.
Q. You know nothing, then, of the impending failure of Dreyfus at all?
A. No, sir.
Q. You did not hear that he was shipping goods all over the country to different points so as to shield them from his creditors?
A. No, sir.
Q. You did not hear that?
A. No, sir.
Q. Was it arranged between you and Dreyfus how you were to carry on this removal, that he should ship the goods from his store and you were to be at the other store to receive them?
A. Yes, sir.
Q. That was all arranged?
A. Yes, sir.
356 Q. When did you make that arrangement with him?
A. The arrangement that I should receive the goods?
Q. Yes.
A. The time that he delivered them to me.
Q. Did you make arrangements on Friday that that night after twelve o'clock he should remove them?
A. No, sir; I went to Meyer Weill on Saturday morning to get the key of the store, and Mr. Weill would not give me the key until midnight, and I told Dreyfus I would remove them early in the morning.
Q. You had arranged on Saturday that after twelve o'clock at night you were to get the keys of Meyer Weill's store and you were

to go to the store and receive the goods which Dreyfus was to ship down to that store?

A. Yes, sir.

Q. That was the arrangement that was carried out?

A. Yes, sir.

Q. And that is the way the goods got there?

A. Yes, sir.

Q. You received them at Meyer Weill's store?

A. I did.

Q. Where was Meyer Weill?

A. He was sitting in his office.

Q. He was there all the while, then?

A. He came after me probably ten or fifteen minutes.

Q. He was there when the first goods came—he was with you there?

357 A. Yes, sir; I think so.

Q. Did you tell Meyer Weill where the goods were coming from and why it was that you removed them in the night-time instead of in the daytime?

A. No, sir.

Q. You did not tell him that?

A. No, sir.

Q. You did not tell him anything?

A. No, sir.

Q. Why did you keep that a secret?

A. Why did I keep it a secret?

Q. Yes.

A. I told Meyer Weill I was going to bring my goods there.

Q. Why did you keep it a secret of where these goods were coming?

A. He did not ask me. I done business before with Meyer Weill.

Q. Why did you not tell him where the goods were coming from?

A. He did not ask me.

Q. But why did you not tell him?

A. If he asked me I would have told him.

Q. You did not mean to keep it a secret?

A. No, sir.

Q. When you found that the honest creditors on Sunday morning early were objecting to the removal of the goods by Dreyfus to send them to you at Meyer Weill's why did you persist in removing them when you knew that they were waiting until — to put a seizure upon them according to law?

358 A. The creditors never asked me any questions.

Q. But why, when you saw there was a difficulty in taking the goods from that store—objected to by the creditors—why did you still persist in removing them on Sunday morning?

A. Because I wanted to get my warehouse receipts and get some money on them.

Q. Were you not afraid that they would be attached as Mr. Dreyfus' property?

A. No, sir.

Q. You did not think that there would be any attachment on Monday?

A. I did not expect that anything should happen, or that he would be attached.

Q. Is it a usual thing in your experience for merchants to get goods delivered to them after twelve o'clock at night?

A. Well, it depends upon circumstances.

Q. Is it usual in your experience; have you ever heard of it before?

A. I heard of it before.

Q. Tell us when you heard of goods being delivered at midnight into any store.

A. It had been done sometimes.

Q. Tell me of a responsible merchant that delivered goods at twelve o'clock at night to another store in the same city. Give me the name of one.

A. I cannot name any now.

359 Q. Who signed the receipts for the goods at Meyer Weill's store; was it Meyer Weill or yourself?

A. The dray receipts?

Q. Yes.

A. I think it was myself. I counted the barrels and gave the dray receipts.

Q. Were there any clerks of Meyer Weill assisting you?

A. No, sir.

Q. Was Meyer Weill perfectly cognizant of the fact that these goods were coming that you were receipting for in his warehouse?

A. Yes, sir. *Q.* He knew that.

A. When did Meyer Weill verify the truth of these dray receipts that he signed?

A. That same Sunday.

Q. In the evening?

A. Yes, sir; on the evening of the delivery.

Q. How did he verify them?

A. By the barrels.

Q. He went upstairs and checked them off?

A. Yes, sir.

Q. Were they all stored upstairs or were they all stored down-stairs?

A. They were all pretty much down-stairs on Sunday.

360 Q. What object had you in keeping from Mr. Erhmann the fact of the exposure or explosion of Dreyfus' business on Sunday when he came to you at Mr. Dreyfus' house?

A. Well, Mr. Erhmann did not ask me any questions, and I did not tell him anything about the explosion or anything.

Q. Do you think that if you had told him that he would have been willing to have loaned you the money on these goods notwithstanding?

A. I think he would.

Q. It would have made no difference, then?

A. No, sir; I don't think it would.

Q. Erhmann never went out to look at the goods to see whether they were *bona fide* articles or not?

A. No, sir.

Q. He took your word for the whole thing?

A. He took the warehouse receipts for it.

Q. He took the warehouse receipts and your word together?

A. Yes, sir.

Q. The transaction, then, between you has been fully detailed in your examination-in-chief here?

A. Yes, sir.

Q. Did Erhmann do this as purely an act of friendship *purely* or a business?

A. Well, it was business, and at the same time it was a friendly act. It was business, of course.

Q. Did he arrange or state what his charge would be for this thing at the time or before he concluded it? Did he tell you what he would charge you?

361 A. He would charge me eight per cent. for the money.

Q. He told you that?

A. Yes, sir.

Q. That he would charge you eight per cent. for the money?

A. Yes, sir.

Q. From the date of the transaction or after the maturity of the notes?

A. From the time I gave him the notes with eight per cent. interest.

Q. From the date of the transaction; that was the date you gave the notes?

A. Yes, sir.

Q. From the date of the transaction you were to pay him eight per cent. interest?

A. Yes, sir.

Q. And the notes, you say, were to be to that effect?

A. I believed the notes said eight per cent. interest.

Q. That was the whole transaction with interest.

A. Yes, sir.

Q. Then on the two notes that he gave you I see that he added eight per cent. interest.

A. Yes, sir.

Q. That Erhmann was to pay you $5,000 after sixty days and $5,000 after ninety days, with eight per cent. interest from the date of the notes, October 29th?

A. Yes, sir.

362 Q. Did you pay him anything else for that transaction?

A. Yes, sir, I paid him something; I believe it was two and a half per cent. commission, which I gave him cash, for I know I paid him two and a half per cent. commission.

Q. Besides the interest on the money?

A. Yes, sir.

Q. You paid him two and a half per cent. commission?

A. Yes, sir.

Q. When did you pay him two and a half per cent. commission?
A. I paid him on Monday, the same day.
Q. The same day that you made the transaction?
A. Yes, sir, the same day that I made the transaction; I paid that in cash.
Q. How much was it?
A. $375.
Q. You say you gave him a check?
A. No, sir, I gave him cash.
Q. Where did you get the cash?
A. Here, in the city of New Orleans.
Q. At what place?
A. At my store, after I got the money on these warehouse receipts.
Q. So, then, I understand you to say that Mr. Erhmann, with the agreement that you were to give him two and a half per cent. commission and eight per cent. interest, gave you a check for $5,000 without deducting the commission?
363 A. Yes, sir.
Q. Trusting to you to pay him the commission?
A. Yes, sir.
Q. And you paid him this commission, you say, after the transaction was completed?
A. Yes, sir.
Q. Were you well acquainted with all of the history of this man Dreyfus' business previous to this time?
A. Yes, sir.
Q. You know it pretty well.
A. Yes, sir; I was well acquainted with him.
Q. Did he tell you about his condition financially, etc., talking to you?
A. No, sir; never did.
Q. Did you know that at one time he had been in partnership with Mr. Gumbel?
A. Yes, sir.
Q. Did you know that the partnership had been dissolved?
A. Yes, sir.
Q. How long before this matter was it dissolved—three years in May, 1881?
A. Yes, sir; I believe so.
Q. Did you know whether or not he owed Gumbel anything?
A. Yes, sir; he owed him something.
Q. You knew that?
364 A. Yes, sir.
Q. Do you know how much it was?
A. No, sir.
Q. Was it not a large amount, over $24,000?
A. No, sir.
Q. And do you not know that since this suit Gumbel has sued him for it?
A. Yes, sir.
Q. It is for $23,000?

A. Yes, sir.
Q. That was due him from the partnership?
A. I don't know.
Q. Did not the suit state so?
A. I don't know; I never looked.
Q. Did you never know what it was for?
A. No, sir.
Q. Did you ever speak to Gumbel?
A. Yes, sir.
Q. Did Gumbel tell you?
A. Yes, sir; I learned it since.
Q. If you knew that he owed Gumbel $23,000, which you have learned since this sale to you, would you consider that at the time you took these goods in payment of what you say was a debt to you that Dreyfus was solvent?
A. Yes, sir.
Q. Notwithstanding the fact that he owed this $23,000 from the partnership?
365 A. Yes, sir.
Q. But still with that fact before you——
A. Yes, sir; I found out afterwards that he was still solvent.
Q. How did you know it?
A. When he showed me the notes—what he had outstanding and his stock on hand.
Q. Do you know that there was meeting of his creditors shortly afterwards?
A. No, sir. There were meetings, I know, but I did not know anything about them.
Q. Were there any meetings of his creditors at the St. Charles Hotel?
A. No, sir; I don't know.
Q. Did you ever see the statement that he made to his creditors?
A. No, sir. I know that he told me afterwards.
Q. Did you ever hear that Dreyfus had stated in the presence of his creditors at that meeting in the St. Charles Hotel that he was insolvent before he bought the goods and at the time he bought the goods of his creditors?
A. No, sir.
Q. You never heard that?
A. No, sir.
Q. Can you account in any way for a solvent man like Dreyfus was, as you say, leaving unpaid a balance of an old partnership debt due Gumbel for three years, not drawing interest, of $23,000?
A. Well, I suppose after the partnership was dissolved
366 there was money outstanding, and Gumbel was a rich man and did not need his money.
Q. Was not that Gumbel a son-in-law of Dreyfus?
A. Yes, sir.
Q. What proportion did the stock which was delivered to you that night and the next morning bear to the whole stock that he had visible?

A. Well, he had a good stock.
Q. What proportion did it bear?
A. Well, about one-third.
Q. It was about one-third of his stock?
A. Yes, sir.
Q. Did you make any estimate to find out what proportion it was?
A. No, sir.
Q. That is just your opinion?
A. Yes, sir.
Q. Do you think it was possible for him to go on successfully in business when he was unable to pay you any money and had to pay you this large debt in goods—do you think he could go on successfully very long?
A. Yes, sir. I did not think it likely that friends would treat him that way, after doing a good business for a length of time, a rich man especially, having about $160,000 outstanding.
Q. You declare, as I understand you, under oath that at the time of this transaction you had no fear of the solvency of Mr. Dreyfus?
367 A. Yes, sir.
Q. And that, obtaining these goods in this way, you were not trying or expecting to get any advantage over his other creditors?
A. No, sir.
Q. You did not?
A. No, sir. I asked him in good faith and he sold me the goods. I say that I had no knowledge that I had any preference over any other creditors.
Q. Did any receipts pass between you and Dreyfus or any instrument of this transaction?
A. No, sir; no receipts. He charged me with it on his books.
Q. Who employed the drays to make the transfer of the goods from Dreyfus' store?
A. I employed them.
Q. Do you remember how much you paid them for the lot?
A. I believe I paid them $30 for the whole transaction—for all the goods delivered.
Q. How many loads, or do you know?
A. No, sir; I don't know. They just made it in a lump.
Q. Did you arrange with them to come there at twelve o'clock at night?
A. Yes, sir.
Q. What time in the day had you made the arrangement with them?
A. On Saturday some time.
Q. What time?
A. In the afternoon.
Q. Were the draymen the usual draymen of Mr. Dreyfus?
368 A. No, sir.
Q. Were they strangers?

A. The drayman used to have several floats; the boss drayman, he had several floats.

Q. You had a large store of your own in New Orleans at the time?

A. Yes, sir.

Q. Was there ample room in it to have received these goods yourself in your own store?

A. Yes, sir.

Q. And you preferred to pay storage in another place?

A. Yes, sir.

Q. Had you agreed beforehand with Meyer Weill what storage you were to pay him?

A. No, sir.

Q. Nothing was said on the subject?

A. Nothing was said on the subject.

Q. Did Mr. Ehrmann come down on that Sunday night to New Orleans at your solicitation or not?

A. I don't know whether he did or not. I wrote to Ehrmann a few days previous that I wanted to see him.

Q. Was it with reference to this expected business?

A. I don't know. I wrote to him that I wanted to see him on some business.

Q. Was it this business that you meant?

A. No, sir; at the time I wrote him I had not concluded this matter. My expectation was to get some money from him.

369 Q. And to get money on these goods if you took them?

A. Yes, sir.

Q. So you expected to make this transaction according to that about the 25th October, 1883?

A. I wrote to Erhmann a few days before that I wanted to see him on business. When I wrote to Erhmann I did not make up my mind to take the goods. I had an offer of the goods at that time.

Q. Was it about this business or other business that you wrote to him?

A. About money matters.

Q. Were the money matters connected with this business or money matters connected with other business?

A. Not exactly with either. I wrote to Erhmann that I wanted to see him on some business.

Q. What business was that?

A. To borrow some money from him.

Q. How were you to borrow money from him when you wrote to him?

A. I did not know yet when I wrote him.

Q. So it was not this business that you wrote to Erhmann in relation to?

A. No, sir; I wrote to him on some business.

Q. Did you tell him to come quick or that you were in a hurry?

A. No, sir.

Q. When did you tell him to come?

A. I told him if he should come in a few days I wanted to see him on some business.

370 Q. When he came down on Sunday night did he not tell you that he came down in consequence of your letter?

A. No, sir; he did not say he came down in consequence of this letter, but he came down.

Q. Did he not say that he came down to see you?

A. No, sir; he did not say that.

Q. He said nothing?

A. He did not say that he came down to see me or anything else.

Q. Did he tell you what his business was in town?

A. No, sir.

Q. Do you know if he had any other business than to see you?

A. I don't know.

Q. When you got these notes I understand you to say you went and negotiated them by discount?

A. Yes, sir.

Q. And you used the proceeds of the money?

A. Yes, sir.

Q. How was it about the last one—the one at ninety days?

A. The last one I collected myself. I got the money for it from the bank.

Q. Erhmann paid the bank and the bank paid you?

A. I suppose so. He had money in the bank.

Q. He took his note up?

A. Yes, sir. I gave in that note and the bank gave.

Q. That is the note that Erhmann produced now?

A. Yes, sir.

371 Q. So you collected the $5,000 with interest from Erhmann notwithstanding the title of the property pledged to him was in dispute, in litigation in court?

A. Yes, sir.

Q. Did he ever complain to you about this transaction and his having put out this $5,000?

A. Yes, sir; he has said he got into a great deal of trouble by pleasing me.

Q. Did he make any remarks about getting into trouble and charge you with having suppressed the facts or he would not have made this transaction with you?

A. No, sir. He complained about my getting him into trouble, but he did not say he would not have entered into the bargain if he knew it.

Q. Have you ever had any settlement with him on this transaction since its commencement?

A. No, sir.

Q. Nothing passed between you?

A. No, sir; only my papers. He has still my notes.

Q. Nothing has passed between you?

A. No, sir.

Q. No settlement to know how much was the balance due or anything?

A. No, sir; no settlement.
Q. He has never called on you to pay your notes?
A. He called, but I could not pay him.
Q. When was that?
A. He asked me whether I could pay the notes, and I told him no, I could not pay them.

372 Re-examined by Mr. BROWNE:

Q. Could you have pledged these goods or made any use of them if you put them in your own store?
A. No, sir; I could not raise money on them if I put them in my own store.
Q. And you were obliged to store them in order to raise money?
A. Yes, sir; I was obliged to store them where I could get the warehouse receipts and transfer them.

(The signature of the witness to this deposition is waived.)

Checks Showing Loans to Dreyfus.

(Stamp.) No. 1. RACELAND, *May* 31*st*, 1882.

(New Orleans National Bank)

Pay to the order of Lehmann Meyer thirty-five hundred dollars.
$3,500.00. S. ABRAHAM.

Stamped on face: Paid Jun- 2, 1882. N. O. Nat'l Bank.
Endorsed: L. Meyer. For deposit to credit of Jos. Dreyfus & Co.
Stamped on back: Mutual National Bank. Jun- 1, 1882. New Orleans, La.

(Stamp.) No. 5. RACELAND, *May* 31*st*, 1882.

People's Bank of New Orleans

Pay to the order of Lehmann Meyer fifteen hundred dollars.
$1,500.00. S. ABRAHAM.

373 Endorsed: L. Meyer. For deposit to credit of Jos. Dreyfus & Co.
Stamped on back: People's Bank of New Orleans Paid 1 Jun.

(Stamp.) No. 380. NEW ORLEANS, LA., *April* 12*th*, 1883.

Germania National Bank

Pay to the order of Mr. Joseph Dreyfus three thousand eight hundred and seventy-five $\frac{0}{100}$ dollars.
$3,875.65. L. MEYER.

Stamped on face: Germania Nat'l Bank. Paid Ap'l 13, 1883. New Orleans, La.
Stamped on back: For deposit to credit of Jos. Dreyfus. Mutual National Bank. Apr. 12, 1883. New Orleans, La.

(Stamp.) No. 391. NEW ORLEANS, LA., *April* 17*th*, 1883.

Germania National Bank

Pay to the order of Mr. Joseph Dreyfus three thousand $\frac{00}{100}$ dollars.
$3,000.00. L. MEYER.

Stamped on face: Germania Nat'l Bank. Paid Apr. 18, 1883. New Orleans, La.
374 Stamped on back: For deposit to credit of Jos. Dreyfus. Mutual National Bank. Apr. 17, 1883. New Orleans, La.

(Stamp.) No. 392. NEW ORLEANS, LA., *April* 17*th*, 1883.

Germania National Bank

Pay to the order of Mr. Joseph Dreyfus seven hundred and fifty $\frac{00}{100}$ dollars.
$750.00. L. MEYER.

Stamped on face: Germania Nat'l Bank. Paid Apr. 18, 1883. New Orleans, La.
Stamped on back: For deposit to credit of Jos. Dreyfus. People's Bank of New Orleans. Apr. 17, '83. Paid.

(Stamp.) No. 395. NEW ORLEANS, LA., *April* 23*d*, 1883.

Germania National Bank

Pay to the order of Mr. Jos. Dreyfus three thousand $\frac{00}{100}$ dollars.
$3,000.00. L. MEYER.

Stamped on face: Germania Nat'l Bank. Paid Apr. 24, 1883. New Orleans, La.
375 Endorsed: For deposit. Jos. Dreyfus. A. H. Dreyfus.
Stamped on back: Mutual National Bank. Apr. 23, 1883. New Orleans, La.

No. 435. NEW ORLEANS, LA., *May* 29*th*, 1883.

Germania National Bank

Pay to the order of Mr. Joseph Dreyfus twenty-five hundred $\frac{00}{100}$ dollars.
$2,500.00. L. MEYER.

Stamped on face: Germania Nat'l Bank. Paid May 30, 1883. New Orleans, La.
Stamped on back: For deposit to credit of Jos. Dreyfus. People's Bank of New Orleans. May 29, '83. Paid.

(Stamp.) No. 462. NEW ORLEANS, LA., *June* 30*th*, 1883.

Germania National Bank

Pay to the order of Joseph Dreyfus, Esqr., seven hundred and fifty $\frac{00}{100}$ dollars.
$750.00. L. MEYER.

376 Stamped on face: Germania Nat'l Bank. Paid Jul- 2, 1883. New Orleans, La.
Stamped on back: For deposit to credit of Jos. Dreyfus. Metropolitan Bank, cor. Chartres & Canal Sts., New Orleans.

(Stamp.) No. —. NEW ORLEANS, *June 18th*, 1883.

The Louisiana National Bank

Pay to the order of Mr. Joseph Dreyfus four thousand $\frac{00}{100}$ dollars.
$4,000.00. L. MEYER.

Stamped on face: Paid Jun- 19, 1883. Louisiana Nat'l Bank.
Stamped on back: For deposit to credit of Jos. Dreyfus. Mutual National Bank. Jun- 18, 1883. New Orleans, La.

(Stamp.) No. 441. NEW ORLEANS, LA., *June 2d*, 1883.

Germania National Bank

Pay to the order of Mr. Joseph Dreyfus twenty-five hundred $\frac{00}{100}$ dollars.
$2,500.00. L. MEYER.

Stamped on face: Germania Nat'l Bank. Paid Jun- 4, 1883. New Orleans, La.
Stamped on back: For deposit to credit of Joseph Dreyfus. People's Bank of New Orleans. Jun- 2. Paid.

377 EXHIBIT "A," INVOICE.—Filed Nov. 10th, 1883.

NEW ORLEANS, LA., *Oct.* 27th, 1883.

Mr. L. Meyer bought of Jos. Dreyfus, rectifier & redistiller, importer & wholesale dealer in wines & liquors, 33 Tchoupitoulas Str.

5 M Home Rulers, 31.00	155 00
4,400 Set Two, 24	105 60
8,400 Hermosa, 46	386 40
5 M El Recreo, 31	155 00
4,500 Paola, 26	117 00
2,500 Graciosa, 25	62 50
4,800 Claudia, 29	139 20
5 M Appallonaris, 41	205 00
5 " Aristocrat, 24	120 00
4,300 Bull Fighters, 41	176 30
3,850 Lazy Ben, 49	188 65
5,500 Panetella, 50	275 00
9,900 Coronado, 24	237 60
6,600 Sweet Sixteen, 25	165 00
3,300 Soubrette, 34	112 20
3,700 Grand Centril, 31	114 70
4,500 Lotus, 51	229 50
9,500 Espastero, 22	209 00
8 M Flora, 36	288 00

378	200 Inoncenia, 19		38 00
	10 M Treasures, 22.50		225 00
2,700	Favorite Puffs, 7		18 90
300	Escepsion, 22.50		6 75
10	M Purity, 32		320 00
7,300	Tropical, 41		299 30
9	M La Flor del Purto, 29		261 00
4	" Masher, 30		120 00
5	" Manzanilla, 31		155 00
6	" Nobility, 29		174 00
10	" No. 130, 18		180 00
9,500	La Flor del Pais, 27		256 50
5,800	Souvenier, 29		168 20
3	M Our Queen, 59		177 00
4,650	Luisita, 32.50		151 13
7	M Reflection, 31		217 00
9,500	Lassie, 20		190 00
10	M High Life, 24		240 00
6,150	La Joya, 31		190 65
3,750	Our Fritz, 27		101 25
10	M Minstrel, 51		510 00
10	" Tell Tale, 36		360 00
4,300	S. O. T., 31		133 30
7,100	Donna, 26		184 60
2,250	47, 21		47 25
4	Portia, 26		104 00
	3,900 Sweetheart, 22.50		87 75
379	5,700 Susana, 56		319 20
	10 M Pure Cross, 20		200 00
9,700	Coquette, 20		194 00
5,500	Majura, 35		192 50
15,400	Fortuna, 16		246 40
6,050	Fire Jacks, 18.50		111 93
7,300	America, 20		146 00
7,950	Ensign, 29		230 55
5	M Estella, $\frac{1}{20}$, 55		275 00
5	" El Concinto, 61		305 00
2,500	Borez Gata Rothchild, 76		190 00
$\frac{5}{8}$	pipes B. D. & Co. cognac	$43\frac{1}{2}$ $1\frac{1}{2}$ 42 $43\frac{1}{2}$ 3 $40\frac{1}{2}$ 43 1 42 $42\frac{1}{2}$ $1\frac{1}{2}$ 41 43 1 42—$207\frac{1}{2}$, 4.60	954 50
9	bls. Smith Blair,	43 $7\frac{1}{2}$ $35\frac{1}{2}$ $43\frac{1}{2}$ $6\frac{1}{2}$ $36\frac{1}{2}$ 44 6 $38\frac{1}{2}$ $47\frac{1}{2}$ 7 $40\frac{1}{2}$ $44\frac{1}{2}$ 7 $37\frac{1}{2}$ $43\frac{1}{2}$ 7 $36\frac{1}{2}$ $44\frac{1}{2}$ 8 $36\frac{1}{2}$ 43 $7\frac{1}{2}$ $35\frac{1}{2}$ $43\frac{1}{2}$ 6 $37\frac{1}{2}$—$334\frac{1}{2}$, 1.80	602 10

$\frac{2}{8}$ pipes Gregroie cognac,	23 2 21 $22\frac{1}{2}$ $1\frac{1}{2}$ 21—42, 4.00	168 00
$\frac{3}{8}$ " Borteau "	22 1 21 $22\frac{1}{2}$ $2\frac{1}{2}$ 20—41, 4.50	184 50
$\frac{3}{8}$ " kirschwasser,	25 $1\frac{1}{2}$ $24\frac{1}{2}$ 25 $1\frac{1}{2}$ $23\frac{1}{2}$ $26\frac{1}{2}$ 5 $21\frac{1}{2}$—69, 3.75	260 75
$\frac{8}{8}$ port,	23 23 23 23 23 23 23 23 23 23 23 23—207, 1.05	217 35
$\frac{2}{8}$ Pamado sherry,	20 20 21 20 20 20 20 20 20 20—182, .95	172 90
$\frac{4}{8}$ El Dorado sherry,	22 22 $21\frac{1}{2}$ 22 —$87\frac{1}{2}$, 1.05	100 63
4 bls. Mong. XXX rye,	$47\frac{1}{2}$ 47 47 47 —$188\frac{1}{2}$, 1.42	267 67
6 " Don Carlos,	50 51 50 50 51 50—304, 1.60	486 40
6 " Imperial Cabinet,	53 50 50 50 51 52 —308, 1.50	462 00
5 " Louisiana Belle,	53 53 51 52 54 —$263\frac{1}{2}$, 1.45	382 08
3 " Imperial Cabinet rye,	48 47 $47\frac{1}{2}$—$142\frac{1}{2}$, 2.30	327 75
5 " private stock B,	48 48 48 48 48—240, 2.60	624 00
380 2 bls. private stock A,	$47\frac{1}{2}$ 47 —$94\frac{1}{2}$, 2.80	264 60
2 bls. Defiance,	$47\frac{1}{2}$ 47 —$94\frac{1}{2}$, 1.35	127 50
1 " Planters' bourbon, $46\frac{1}{2}$, 1.35		62 78
2 " Gilt Edge,	$51\frac{1}{2}$ 52 —$103\frac{1}{2}$, 1.40	144 90
6 " peach rum,	53 52 52 53 52 $51\frac{1}{2}$— $314\frac{1}{2}$, 1.65	518 93
3 " Golden-Sheaf bourbon, '70,	$45\frac{1}{2}$ $45\frac{1}{2}$ 46 —137, 1.75	239 75
3 " " " " '76,	$46\frac{1}{2}$ 45 45 —$136\frac{1}{2}$, 1.60	218 40

13 " Monarch,	45 6½ 38½ 45½ 7½ 38 44½ 7 37½ 45 8½ 36½ 44 6½ 37½ 45 7 38 44½ 7½ 37 45½ 8½ 36½ 45 7½ 38 46 7 39 44½ 7 37½ 43 7½ 35½ 45½ 7½ 38 —487½, 2.10	1,023 75
⅛ pipes L. D. gin,	22½ ½ 22 22½ ½ 22 22½ ½ 22 22½ ½ 22 22½ ½ 22 22 22 22 23 22 23 22 23 22 23—224, 1.35	302 40
⅛ pipe O. D. & Co. cognac,	23 ½ 22½ 23 ½ 22½ 23 ½ 22½ 22 ½ 21½—89, 1.35	120 15
⅛ Hennesy "	23 ½ 22½ 23 ½ 22½ 23 ½ 22½ 23 ½ 22½—90, 1.35	121 50
1 bl. Incomparable, 46½, 1.35		62 78
1 " Southern Home, 46½, 1.35		62 78
2 " Lazy Ben,	44 43½—87½, 1.35	118 13
20 baskets champagne, 28.00		560 00
		19,927 87

381 EXHIBIT "B." Offered by Intervenor. Filed February 20, 1884.

Memorandum.

NEW ORLEANS, *May 28th*, 1883.

From H. Legendre, 5 Carondelet St.
To Lehman Meyer.
Acceptance Meyer Weill & Co., $2,500, due 25–28 Nov., '83, 185 days, 9 | 10 ---- $115 62

½ *p* % commission	12 50
	$128 12
N't p'd	2,371 88
	$2,500 00

E. E.

Memorandum.

NEW ORLEANS, *June 6th*, 1883.

From H. Legendre, 5 Carondelet St.
To L. Meyer.

Acceptance Meyer Weill, 2,500, due 1 | 4 Jan'y, '84, 212 days, 9 %	133 13
½ bro.	12 50
	145 63
Net pro.	$2,354 37
	$2,500 00

382 United States Circuit Court, Eastern District of Louisiana.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS *et al.* } 10505, 10520, 10521.

Testimony for Defendants.

Agreements	1
Ferdinand Gumbel	3
Cornelius Gumbel	24
Meyer Weill	52
Simon Gumbel	114

Offered by defendant and filed 30 Nov'r, 1885.
T. McC. HYMAN, *D'y Clerk.*

383 United States Circuit Court, Eastern District of Louisiana.

H. WEILLER & Co.
vs.
JOSEPH DREYFUS *et al.*

Testimony resumed on behalf of the defendants before A. G. Brice, Esq., special examiner, this 18th day of April, 1885.

Present: R. H. Browne, Esq., solicitor for defendants; D. C. Labatt, Esq., solicitor for complainants; A. B. Phillips, Esq., solicitor for E. Dubois, a complainant.

It is admitted by the solicitor for defendants that upon the trial of the intervention and third opposition of A. B. Erhmann, in the case

of H. Weiller & Co. against Joseph Dreyfus, in the circuit court of the United States for the eastern district of Louisiana, on the law side thereof, that the presiding judge charged the jury that the sale from Joseph Dreyfus to Lehman Meyer being shown to be a real one the jury should disregard all testimony offered by the plaintiffs going to show that the sale was fraudulent and collusive; that such a question could not be tried on the law side of the court, and that the parties plaintiff must be left to prosecute their action on the equity side of the court to annul the sale.

And it is now agreed that the testimony taken in the present case of H. Weiller & Co. against Joseph Dreyfus shall be used in all the cases now pending against Joseph Dreyfus *et al.* for the annullment of the sale.

384 FERDINAND GUMBEL, a witness produced, sworn, and examined on behalf of defendants, deposes and says:

By Mr. BROWNE:

Q. What is your full name?
A. Ferdinand Gumble.
Q. Where do you reside?
A. I reside in Bay St. Louis.
Q. Are you engaged in business in New Orleans?
A. Yes, sir; I am engaged in business at No. 36 Perdido street.
Q. Did you do business in New Orleans in October, 1883?
A. Yes, sir.
Q. Are you a son-in-law of Joseph Dreyfus?
A. No, sir.
Q. Mr. William Stein has sworn in the case of E. Dubois against Joseph Dreyfus *et als.* that three of the Gumbels and A. Erhmann were present together on Gravier street, on the corner of Tchoupitoulas, between the hours of eleven o'clock of Sunday night, October 28, 1883, and half past twelve of the same night, walking up and down Gravier street and to and from Magazine and Tchoupitoulas street. To fix it in your mind more particularly I will state that it was the night and that Sunday morning that Mr. Dreyfus had been served with a number of attachments. Now, state whether you were there at any time that night on Gravier street where I have described it; and, if so, who was with you.
A. That Sunday night that you speak of I was at the corner of Tchoupitoulas and Gravier street between the hours of eleven and one o'clock, in company with my two brothers.
Q. Mention your brothers' names.
385 A. C. Gumbel and S. Gumbel.
Q. Who else was with you?
A. Nobody else.
Q. Was A. Erhmann, of Morgan City, at any time with you that night?
A. No, sir; I did not see him.
Q. Had you seen him on that day at all?
A. No, sir; I don't think I did.

Q. Anywhere?
A. No, sir; I don't think I saw him.

Mr. Phillips objects to the above questions as leading.

Q. William Stern says in his testimony in the case of E. Dubois against Joseph Dreyfus *et als.*, in equity, that he saw two of the Gumbles, he did not know which ones of the three, but he saw two of the Gumbles with A. Erhmann on the gallery of Joseph Dreyfus' house on Josephine street that Sunday evening before five o'clock.
A. Well, I was not there.
Q. You were not one of these Gumbles that were there?
A. No, sir; I wasn't there at Dreyfus' that afternoon.
Q. State all the Gumbels that are here.
A. Simon Gumble, Cornelius Gumble, and myself.

Cross-examined by Mr. PHILLIPS:

Q. You don't know that Mr. Erhmann and your brother were not on Mr. Dreyfus' gallery on Sunday evening?
A. No, sir.
Q. They might have been there?
386 A. Yes, sir; but I was not there.
Q. But you don't know that your brother was there?
A. No, sir.
Q. What were you doing on Sunday night with your two brothers walking up and down Gravier street between Magazine and Tchoupitulas streets at that time of night?
A. I was walking with my brothers.
Q. What was the purpose of walking at that time of night?
A. I had no purpose except that I was accompanying my brothers.
Q. Why were you accompanying your brothers up and down the street from eleven until one o'clock?
A. Well, I had no other purpose except to accompany my brothers.
Q. That is all?
A. Yes, sir.
Q. Did they tell you nothing?
A. Yes, sir; in conversation they said they were about to seize Dreyfus.
Q. Is not one of your brothers a relation to Dreyfus?
A. Yes, sir.
Q. What relation is he?
A. He is a son-in-law.
Q. Is your other brother any relation to him?
A. No, sir.
Q. Are you any relation to Dreyfus?
A. No, sir.
Q. Was not one of your brothers in business with him on Common street?
A. Yes, sir.
Q. What time was that?

387 A. I think it was about 1879, 1880, or 1881.

Q. They were partners?

A. Yes, sir.

Q. Did your brother inform you that he had any information about Dreyfus going to remove his goods—I mean while you were walking up and down; that he had received some information that Dreyfus was going to remove his goods?

A. I don't recollect of any such information. I don't think he told me of anything like that.

Q. You just now mentioned that they were going to seize Dreyfus?

A. Yes, sir.

Q. Who was going to seize?

A. C. Gumbel and S. Gumbel, both.

Q. What were they waiting for? Did they tell you? What was the object of walking up and down? Did they tell you anything of what they wanted you there for?

A. They did not want me there.

Q. Why were you there?

A. I walked along for company's sake.

Q. Do you mean to say, on your oath, that you did not know anything about this thing? Did you not know what they were there for?

A. To seize Joseph Dreyfus.

Q. Why? What information did they have?

A. That I cannot say.

Q. They did not tell you anything at all?

A. I don't recollect that they told me anything particularly.

Q. I want you to recollect.

388 A. Well, I don't recollect.

Q. Then you solemnly swear that they never told you a word?

A. They told me that they were going to seize Dreyfus.

Q. Nothing else but that?

A. I don't recollect there was anything else said. There might have been other talk about it, but I paid no attention to it.

Q. When did your brother seize? What date was it? How many days after that Sunday night did he seize?

A. I don't know.

Q. You don't recollect that?

A. No, sir.

Q. You are positive that they did not seize that Sunday night?

A. I think they did seize that Sunday night.

Q. On that very night?

A. I think they did on that very night from Sunday to Monday.

Q. Did you see Mr. Dreyfus at his store that Sunday night?

A. No, sir.

Q. Did you go around to the store at all on Sunday night?

A. I was opposite the store.

Q. Was anybody inside?

A. I don't know.

Q. Did you look?

A. That I don't recollect. It is so long ago that I cannot recollect.
Q. Did you see anybody inside?
A. Well, I don't know.
389 Q. Did you see any goods moved away from the store that Sunday night?
A. No, sir; I did not.
Q. Did you see any goods moved away from there at any time?
A. Well, I don't exactly understand you.
Q. I mean goods removed on floats down to Meyer Weill's store.
A. No, sir; I did not.
Q. Did you see Mr. Stein there?
A. I don't recollect; I may have seen him. I cannot recollect.
Q. Did you not see Mr. Florance there, jumping into a cab that Sunday night?
A. Not that I know of.
Q. Do you mean to say that you saw nobody but yourself?
A. I saw plenty of people, several people, around there—a half dozen or a dozen.
Q. Can you name anybody that you saw there?
A. No, sir; I don't recollect.
Q. Do you know Mr. Lehman Meyer?
A. Yes, sir.
Q. What relation is he to Dreyfus?
A. His son-in-law.
Q. Do you not know that he failed before Joseph Dreyfus failed?
A. I don't know that.
Q. Or a little afterwards?
A. I heard that he failed a little afterwards.
Q. How long afterwards?
A. I cannot say.
Q. Was it a day or two afterwards?
390 A. It may have been a day or a week or two weeks. I cannot recollect.
Q. Your memory is very short on that subject?
A. Well, I think it is long. It is two years ago. This thing has not been interesting to me as much as that. I don't recollect that far back. Either my memory is short or long; I cannot say.
Q. Did you have any conversations with Dreyfus at all?
A. I had many a conversation with Dreyfus.
Q. I am a day or two before his failure?
A. No, sir; I may have had conversations with him, but I don't know.
Q. In regard to his failure?
A. No, sir; no conversation.
Q. Did you have any conversation with him that Sunday morning?
A. No, sir.
Q. Or that Sunday evening?
A. Yes, sir.
Q. Or Monday morning?

A. It may be that I saw him and spoke to him, but nothing in regard to his failure.

Q. Do you know Mr. Erhmann?

A. I do.

Q. Did you see him there that day?

A. I don't think I saw him that day. I don't recollect; perhaps I did, but I don't recollect that I did.

Q. Did you see him at Dreyfus' house that Sunday evening?

391 A. No, sir; I did not.

Q. Did you see him there that Sunday morning?

A. No, sir.

Q. How early had you got on Gravier street, between Magazine and Tchoupitoulas streets?

A. I think that I got there between the hours of eleven and one o'clock.

Q. Was that the first appearance that you had made there—between the hours of eleven and one o'clock?

A. That was my first appearance—between eleven and one o'clock.

Q. Did your brothers come for you?

A. I met my brother, C. Gumble, at his house. I went to his house.

Q. And he asked you to come there with him?

A. Yes, sir.

Q. He did not tell you what he wanted you for?

A. Yes, sir; he told me that he was going to seize Mr. Dreyfus.

Q. That was on Sunday night?

A. That was on Sunday night.

Q. Is that the one who is the son-in-law of Dreyfus?

A. Yes, sir; it is.

And cross-examined by Mr. LABATT:

Q. Were you interested as a creditor, directly or indirectly, in any claim against Dreyfus?

A. No, sir.

Q. You have no interest in either of the claims of C. Gumble or S. Gumble?

A. No interest at all.

392 Q. Are you now engaged in business with either of them?

A. I am engaged with C. Gumbel.

Q. In what capacity?

A. As partners.

Q. When did you form the partnership?

A. I think it was in July, 1882, we started.

Q. Previous to that were you not in the employ of C. Gumbel?

A. No, sir.

Q. Or S. Gumbel?

A. No, sir.

Q. Do you know anything of the origin of this debt against Dreyfus by C. or S. Gumbel?

A. Only what they told me.

Q. From the books and from what they told you?
A. Yes, sir; from what they told me.
Q. What was the origin?
A. C. Gumbel had a certain amount of money in Dreyfus' hands.
Q. Resulting from the old partnership, wasn't it?
A. Yes, sir.
Q. The partnership which was dissolved in May, 1881?
A. Yes, sir; I think it was about that time.
Q. Did you ever know of C. Gumbel making any demand for the payment of that debt on Dreyfus at any time?
A. I think he did at several times; at least so he told me.
Q. And he was unable to collect it?
A. He collected some, but did not succeed in collecting the whole amount.

Q. What do you think was the balance?
393 A. That I cannot say; I don't recollect.

Q. Will you inform us why it was that you were there at such an unusual hour of the night to seize the store of Dreyfus? Had any appointment been made with the sheriff to meet your brothers there?

Mr. Brown objects to this question and to the answer.

A. That I cannot say.
Q. Were your brothers to make the seizure yourselves or was it to be done by an officer?
A. That I cannot say. I suppose it was to be done by the sheriff.
Q. Did not your brothers so inform you?
A. I think he did. These minor things I did not pay attention to, but I knew that they seized him.
A. Did you know what had taken place previous to that time—on Sunday—at the store of Dreyfus?
A. No, sir.
Q. You had not learned the slighest information?
A. No, sir.
Q. Did you see the "City Item" newspaper that evening?
A. Yes, sir; I saw it in the evening, I believe.
Q. Then when you were there you knew there was some explosion in his commercial plans?
A. Yes, sir; I knew it from what I read.
Q. Do you know when Mr. C. Gumbel obtained the writ of attachment for the purpose of seizing—when he obtained it from the court?
A. No, sir.

Q. Did you go up to Mr. Dreyfus' house on Sunday night
394 or on Monday night in a cab, or go away from there in a cab?

A. No, sir; I was not at his house Sunday or Monday; I did not go there.
Q. When did you leave the store on Sunday night after twelve o'clock? How long after twelve o'clock? I mean in the neighborhood of the store.

A. I think it was about after one o'clock.
Q. Had the sheriff attempted to seize then?
A. So I was told by my brothers. There were some officers there, but I did not know which was the sheriff.
Q. Was the door open?
A. I passed there; I don't think it was open there; it might be or not.
Q. Did you see any lights through the door?
A. I don't think I did; I don't recollect.

By Mr. BROWNE:

Q. Are you positive you saw the newspaper on Sunday? Was it on Monday that you saw this account?
A. I think I saw it on Sunday.

CORNELIUS GUMBEL, a witness produced, sworn, and examined for the defendants, says:

By Mr. BROWNE:

Q. What is your business?
A. Cotton factor and commission merchant.
Q. What were you in October, 1883?
A. A cotton factor.
Q. You were of the firm of C. Gumbel Brothers & Meyer?
A. Yes, sir.
395 Q. You are a son-in-law of Joseph Dreyfus, I believe?
A. Yes, sir.
Q. Mr. William Stein has testified in this case of E. Dubois against Joseph Dreyfus *et als.* that on the Sunday night, October 28, 1883, between the hours of eleven o'clock and one o'clock of Sunday night, he saw three of the Gumbel brothers walking on Gravier street, between Tchoupitoulas and Magazine streets—walking backwards and forwards on Gravier street, between Tchoupitoulas and Magazine, and that Mr. A. Erhmann, of Morgan City, was with you. Do you know A. Erhmann?
A. I do.
Q. State whether or not Mr. A. Erhmann was with you on that occasion as I have just described.
A. No, sir; he was not. I know I did not see him.
Q. Was he with you?
A. No, sir.
Q. Did you see Stein at all anywhere there that Sunday night?
A. I did.
Q. William Stein also swears in the same case that he saw two of the Gumbel brothers before five o'clock on that same Sunday afternoon with Joseph Dreyfus walking up and down the gallery of Dreyfus' house on Josephine street and that A. Erhmann was with you. State whether that is so.
A. No, sir; it is not so.
Q. Were you at the house of Joseph Dreyfus that afternoon at all?

A. Well, I hardly recollect, but I think I was there that afternoon.

Q. Who was with you? Was either one of your brothers there with you?

396 Mr. Phillips objects to the question as leading.

A. No, sir; my brother was not there with me.

Q. Why did you go there?

A. I cannot recollect. I think my wife was there, and that I went there to get my wife.

Q. How long did you remain?

A. Just five or ten minutes. I just walked in and walked out.

Q. Did you see Mr. Erhmann that night at all?

A. Well, I think I saw him there that evening when I went over there.

Q. Where was he?

A. I think he was sitting in the sitting-room. I am not sure whether it was that day or the next day.

Q. What did you say to him?

A. I don't know if I spoke to him. I actually cannot recollect.

Cross-examined by Mr. PHILLIPS:

Q. You have been in partnership with Mr. Dreyfus?

A. Yes, sir.

Q. Your place of business was where—on what street?

A. When?

Q. When you were in partnership with Dreyfus.

A. On Common street.

Q. Between what streets?

A. Between Magazine and Tchoupitoulas streets.

Q. What relation are you to Dreyfus?

A. I am his son-in-law.

397 Q. Were you around the square on which the store of Dreyfus was that Sunday evening; if so, at what hour were you there?

A. About twelve o'clock.

Q. How late did you remain there?

A. Well, about half an hour, I suppose, between twelve and one o'clock.

Q. Did you not remain there later than one o'clock?

A. I don't think so.

Q. Who was with you at the time?

A. My two brothers.

Q. Why did you have your two brothers there?

A. Well, they just accompanied me.

Q. For what purpose?

A. For to make the seizure.

Q. Who was going to make the seizure?

A. The sheriff made the seizure.

Q. Were you with the sheriff?

A. No, sir; I found him there.

Q. You found the sheriff there?
A. Yes, sir.
Q. At what hour?
A. At twelve o'clock.
Q. Why did you remain there afterwards?
A. I don't know. I wanted to see what was going on.
Q. It was your seizure?
A. Yes, sir; it was my seizure.
Q. Did you see Mr. Dreyfus there Sunday night?
398 A. No, sir.
Q. Did you see Mr. Dreyfus that Sunday morning?
A. No, sir; I don't know that I did. I saw him in the morning or in the evening at his house.
Q. Were you there Sunday evening at his house?
A. Yes, sir.
Q. What hour was it?
A. I don't recollect; it was in the evening.
Q. Where was Dreyfus when you saw him at his house?
A. I don't know.
Q. Down-stairs or upstairs?
A. I think it was down-stairs; I don't recollect that I saw him at all, but if I did it was there.
Q. Where did you see Mr. Erhmann?
A. I think I saw him sitting in the sitting-room.
Q. Who was sitting with him there?
A. I don't recollect.
Q. Did you have any conversation with him?
A. I don't think I did.
Q. You had no conversation with him?
A. If I did it was nothing more than when did he arrive or such.
Q. Did you go on the gallery with him?
A. No, sir.
Q. Were any of your brothers there?
A. No, sir.
Q. Did you go on the gallery to see if there was anybody on the gallery?
399 A. I walked out on the gallery to go off.
Q. You walked on the gallery?
A. I did not walk on the gallery.
Q. You did go on the gallery?
A. I had to go on the gallery to get out.
Q. I mean the gallery fronting the street.
A. Yes, sir; of course.
Q. You don't recollect the hour when you saw Mr. Erhmann there?
A. It was in the evening, that I know.
Q. Was it after five o'clock?
A. It must have been after five o'clock.
Q. Did you have any conversation with Mr. Dreyfus in regard that he was going to move his property?
A. No, sir; I did not speak to him.

Q. Where did you get your information that he was going to remove and to have the sheriff there that Sunday night?

A. Well, it was seized in the morning and the whole city knew it.

Q. Who had seized it in the morning?

A. I don't know; about half a dozen of them that Sunday morning.

Q. Did you go to court on Saturday to cause what was done Sunday morning?

A. No, sir.

Q. What time did you go to court?

A. I went Saturday.

Q. Saturday morning?

A. No, sir; Saturday evening.

400 Q. What information did you have on Saturday which made you go to court then?

A. Well, I had rumors from everywhere that he was going to burst up. The rumors were all over the street.

Q. Did you see Dreyfus on Saturday morning?

A. No, sir; I don't think I did.

Q. Are you not sure that you had a conversation with Dreyfus Saturday morning?

A. That I don't recollect. It is two years ago and I may have had fifty conversations.

Q. But I mean in regard to moving his goods.

A. No, sir.

Q. Did you not know that these goods were to be removed from Dreyfus' store to the store of Meyer Weill?

A. No, sir.

Q. Did Meyer Weill have any conversation with you?

A. No, sir.

Q. Did you see any goods removed away from there on Saturday evening?

A. No, sir.

Q. Were you in the neighborhood of the store on Saturday evening?

A. I don't think so.

Q. Are you not sure?

A. No, sir; I am not sure. I don't recollect. I don't think I was there.

Q. Why were you not there, when you had taken out the writ on Saturday evening?

A. Well that is a queer question, why?

Q. I am asking you why.

401 A. I cannot answer you that.

Q. What made you come there Sunday night when you had issued your writ Saturday evening?

A. Because I wanted to be sure to see it executed.

Q. You did not care about going there Saturday to see?

A. No, sir.

Q. You thought you would go there Sunday?

A. Yes, sir; I should have gone there Saturday.

Q. Why was not your writ executed on Saturday, when you took it out?

A. Well, that question I have asked myself twenty times why it was not executed. It was the business of the lawyers and the judges, but it seems they were not in a hurry.

Q. Had you any information on Saturday that your writ had been issued?

A. No, sir.

Q. So you thought you would go there at twelve o'clock on Sunday night to find out?

A. Yes; I thought I would have it executed then.

Q. Was not that a very unusual hour to go to see about the execution of a writ?

A. Yes, sir; it was.

Q. Do you know Mr. Lehman Meyer?

A. Yes, sir.

Q. Do you know whether he had failed a short time after Mr. Dreyfus?

A. I believe he did.

Q. Do you know how long after?

A. No, sir.

—. Was it not a day or two before the failure of Dreyfus?

A. I don't recollect.

Q. Was it not before the failure of Dreyfus?

A. I don't recollect.

Q. Did you not know him intimately and well?

402 A. Yes, sir.

Q. Have you not seen him after at Dreyfus' house?

A. Yes, sir.

Q. Did you have any conversation about these things?

A. Well, I don't know whether he failed before or after.

Q. Then your memory is very short?

A. It is in that respect.

Q. Are you acquainted with Mr. Erhmann?

A. Yes, sir.

Q. Do you know whether he came by a steam-engine from Morgan City to New Orleans?

A. No, sir; I don't know that.

Q. Had he not arrived very suddenly when you saw him there at Dreyfus' house that evening?

A. Well, he generally arrived suddenly.

Q. But that Sunday evening did he not tell you how he arrived in the city?

A. No, sir.

And cross-examined by Mr. LABATT:

Q. When and how did your alleged claim on which you attached the stock of Dreyfus accrue?

A. From the partnership.

Q. When was that partnership ended and when was that settlement made of the indebtedness to you?

A. In July, 1882.

Q. How much was he indebted to you at that time?

A. About $30,000.

403 Q. Was any payment made of that amount?

A. Yes, sir.

Q. How much?

A. About $10,000 was paid.

Q. How was that $10,000 paid?

A. Four $2,500 notes, which he made.

Q. Was any note given for the balance?

A. No, sir.

Q. It was an open account?

A. Yes, sir.

Q. Did you ever make a demand for that while he was solvent?

A. No, sir.

Q. Did you ever make a demand for it within a month previous to your getting out the attachment?

A. No, sir; for the simple reason that he paid me $10,000 and the next fall he was to pay me the other $10,000. Between the months of November and December he agreed to pay it and he failed.

Q. When did you first have your suspicions aroused as to his insolvency, so as to protect yourself by an attachment?

A. It must have been two or three days before.

Q. Two or three days before you got it out?

A. Yes, sir.

Q. What aroused your suspicions?

A. I heard rumors of his insolvency. I was not on very good terms with him at the time; we spoke together, but nothing else.

Q. I understand you to say that after having your suspicions

404 aroused you never went to him to make a demand on him personally?

A. I suppose I did, but I don't recollect; I cannot say that I did.

Q. You have no recollection of any interview in which you exacted payment of your money?

A. Not that money; he owed us other money.

Q. Did you ever make a demand on him for money before the attachment?

A. Yes, sir.

Q. And he said he was unable to pay?

A. Well, he said he had not the money then.

Q. He was unable to pay you when you made the demand?

A. Yes, sir.

Q. How long before you made that affidavit had you gone to your lawyers to prepare the papers for the attachment?

A. The same day.

Q. Was it in the morning that you went to your lawyers?

A. I don't know; it was during the day. It was in the morning or evening.

Q. Do you not know that the writ of attachment was signed and

in the hands of the sheriff between four and five o'clock Saturday evening?

A. No, sir.

Q. What time was the writ placed in the hands of the sheriff?

A. I don't think it was there before five or six o'clock that night. I knew it the next morning.

Q. Did you give any directions to your counsel or to the sheriff not to make the attachment immediately, but to hold the
405 writ in readiness until you wanted it?

A. No, sir; I don't know how the thing was worked.

Q. But you gave no directions to your counsel?

A. I don't know, but I think I did.

Q. What were these directions?

A. To take out the execution and close him up.

Q. When?

A. On Saturday evening.

Q. Did you order it to be done on Saturday evening or Sunday evening?

A. I don't know; I don't know how the thing worked, anyway. I left that to the lawyers. I was advised it could not be done that night. I think they advised me that they could not get the judges or something.

Q. Was it not arranged between you and your lawyer that it was to be done the next night?

A. No, sir; I went that Sunday and ordered him to seize, and he went and did it.

Q. What did you do then?

A. He told me he was going to seize that night. I did not know that the seizure could be made that night, but the lawyers said yes. They fixed the whole thing.

Q. Did you see the store open during your walk around it or in that neighborhood that night before you and the sheriff went in to seize?

A. No, sir.

Q. That is closed up as every merchant closes his store?

A. Yes, sir.

406 Q. Did you know there was anybody there?

A. Yes, sir; I knew there was somebody there.

Q. You saw it was open?

A. Well, I don't know, but I know they were talking inside, because I saw half a dozen people there walking about and talking.

Q. You saw there was somebody in the building—there were lights at twelve o'clock that night?

A. Yes, sir; the same night I made the seizure.

Q. Did you ever see that occur in that store before?

A. No, sir; I never was in that store at twelve o'clock at night before.

Q. Did you expect to see people there when you went to make your seizure?

A. Certainly.

Q. How did you know?

A. I saw it was seized that day by the United States marshal.

Q. How did you know it would be open at twelve o'clock that night?

A. The lawyers told me. I think there was communication between the parties inside and the parties outside.

Q. You mean to say that the doors were open?

A. I say that they communicated together—the people inside and the people outside. I never saw the door open. I saw it once open and close again.

Q. Did you see the lights?

A. Well, I don't recollect.

Q. From your intimacy with the family of Mr. Dreyfus and his son-in-law, Lehman Meyer, did you ever hear that Lehman
407 Meyer was a creditor for a cash loan for $26,000 from either of them?

A. Yes, sir; but I never heard the amount.

Q. When did you hear that Lehman Meyer was a creditor?

A. Well, at the same time.

Q. I do not understand your "at the same time." I ask you when?

A. A day or two before.

Q. You did not know it before that?

A. I did not know he was a creditor at all; I never investigated their affairs at all; I did not know what the amount was or anything except a few days before I knew he was a creditor.

Q. You did not know it a few months before?

A. No, sir; I did not.

Q. You saw William Stein there that Sunday night?

A. Yes, sir; I did.

Q. Between what hours did you see him?

A. Between twelve and one o'clock.

Q. How long before this failure was it considered notorious that Mr. Dreyfus was in trouble?

A. Well, I don't know that.

Q. Well, to your knowledge?

A. Only a day or two before, because he did not tell me he speculated. If I thought he was speculating or borrowing from Tom, Dick, and Harry I would have gone for him before.

Q. You had not heard rumors two or three weeks before that his credit was impaired?

A. No, sir; I did not. These things did not come so close
408 to me as to others. Others may have heard it, but I did not.

By Mr. PHILLIPS:

Q. Did you see Lehman Meyer at Dreyfus' store on that Sunday night?

A. No, sir.

Q. You did not see him there Saturday?

A. I don't know; I was not there Saturday.

Q. Were you there Saturday evening?

A. I don't recollect if I was or saw him at all.

Q. You saw Dreyfus that Sunday evening at five o'clock?
A. Yes, sir; I was at his house.
Q. Did you see Mr. Dreyfus there?
A. I don't recollect.
Q. Did you not say you had a conversation with him?
A. No, sir; I did not have a conversation. I told you I merely went in to get my wife and walked out again.
Q. You did not tell him that you were going to seize him that night?
A. No, sir.
Q. You were on good terms with Lehman Meyer?
A. Well, I was on good terms; I spoke to him when I met him.
Q. Did he tell you that Mr. Dreyfus had sold him a portion of his goods that night?
A. No, sir; I did not see him at all that day; I don't think he was at the house.

By Mr. BROWNE, for defendant:

Q. Are you positive that you saw Mr. Erhmann there that evening or was it the next day?
409 A. That I cannot say positively; these things occurred a year and a half ago.

By Mr. LABATT:

Q. Were you there the next day?
A. I don't recollect that either.

410 NEW ORLEANS, *May* 7, 1885.

H. WEILLER & Co. *et als.*
vs.
JOSEPH DREYFUS *et als.*

Testimony on behalf of the defendant resumed this day before A. G. Brice, Esqr., special examiner.

Present: R. H. Browne, Esq., for the defendant; D. C. Labatt, Esqr., for the complainants, H. Weiller & Co.; A. B. Phillips, Esqr., for E. Dubois, a complainant.

MEYER WEILL, a witness produced, sworn, and examined on behalf of defendant, says:

By Mr. BROWNE:

Q. You are one of the defendants in the case of H. Weiller & Co. *et als.* against Joseph Dreyfus and others in the United States courts?
A. Yes, sir; unfortunately.
Q. Do you know the complainants, H. Weiller and others.
A. I do not.
Q. Do you know Joseph Dreyfus?
A. I used to know him.
Q. Do you know Lehman Meyer?
A. Yes, sir.

Q. Do you know Abram Erhmann?
A. Yes, sir.
Q. Do you know David Levi?
A. Yes, sir; I know him.
Q. There were some goods brought to your store during the latter part of Saturday night, October 28, 1883, and Sunday morning, October 28, 1883?
411 A. I consider it was in the morning that the goods came to my store. By night I mean darkness or long before daylight.
Q. Who brought these goods there?
A. Some draymen; I saw some draymen.
Q. Who made the request that these goods be brought to your store?
A. Mr. Lehman Meyer.
Q. When did he first apply to you to bring the goods into your store?
A. It was on Friday he asked me; he was at my warehouse. I used to receive goods in my warehouse sometimes for other people. He knew I had room and he asked me if I could give him storage, and I said I had no objection. That was on Friday, and I heard no more about it. Then he came into my office and asked me if I had some storage, and I said yes. Then on Saturday morning I saw him again; he met me on Canal street, and he said, "Well, Meyer, I want to put some goods into your store," and I said, "To-day is Saturday, and you know I never open my store on Saturday to receive goods; you must come another time." Then he said, "I want to go away to-morrow morning to Thibodeaux (where he has a store, and where he goes every Sunday morning, as I know), and if I do not get the goods off my hands to-day I will have to miss the train to-morrow," and I said, "It makes no difference; you cannot get my store to-day, but to-morrow you can come even before daylight and have it." So he said he would. The train started for Thibodeaux at seven
412 o'clock, and I told him to come at any time before to-morrow morning, even before seven o'clock, and he could have the store, but that I would not open the store on Saturday for my own business. I saw him on Saturday evening again and I told him the same thing, and on Sunday morning at about one o'clock the bell rang at my house—I was getting up—and there was Mr. L. Meyer, and I asked him what he wanted. He said, "I want the keys of your warehouse," and I said, "You want them now, before morning?" and he said, "Yes; you told me I might have them; I want to go to the train after daylight; I know there are some boxes to be moved, and I want to be on time." So I concluded to give him the key. That was after one o'clock in the morning.
Q. What were the relations between you and Lehman Meyer in the way of friendship? I do not mean relations, by blood, but your standing together?
A. We are acquainted, that is all. We are no relations whatever. I used to know him for the last twenty years. We used to do business, he and I, and of course I gave him the keys.
Q. What time did you come down to your store?

A. Well, sir, when Meyer left my wife was not satisfied that I left my office and warehouse open. My store reached back to Clinton street, and my office was in front on Old Levee street. Then I came to the conclusion that anyhow some stranger might come in, and I made up my mind to come down town. And when I came down I saw lights in my store and two or three loads of goods on floats. I went into the office and commenced working at my books, and they stopped about that time bringing in the goods until about
413 seven o'clock in the morning, and then Meyer was going out.

Q. Seven o'clock Sunday morning?

A. Yes, sir; Mr. Meyer was going out to attend to his business; he was going to miss the train anyhow and he brought in more goods. I was in the office at the time and I let them do it. It was none of my business. That is all I know.

Q. What did he tell you about where he was going to bring these goods from?

A. I never asked him in the beginning. He had a store, and I thought he would bring his goods from his store in order to put them there. I said, "You want to bring the goods to my store in order to get money on them," because in his own store he could not do that; but I made up my mind if he wanted me to loan him money on the goods I would not do it. But it was in my mind that he wanted to put the goods in my warehouse in order to raise money, as many people do.

Q. What knowledge had you of these goods coming from the store of Joseph Dreyfus?

A. I had no knowledge whatever.

Q. What were the relations between Dreyfus and yourself?

A. We had no relation whatever.

Q. I do not mean blood relation, but I mean as business men.

A. Well, I have not spoken to Dreyfus for five years, and I have a good reason for it. If I had known that these goods came from Joseph Dreyfus' store I would not have received them for their weight in gold, because Dreyfus treated me shamefully.

Q. When did you take an account, or did you take an account, of the goods that came in there?

414 A. About ten or eleven o'clock Sunday morning I wanted to see what kind of goods they were, because Mr. Lehman Meyer told me he wanted some warehouse receipts for them. I commenced taking a memorandum, and took down so many barrels of whiskey and so many packages of cigars and so on. I did not examine every barrel or box, but I knew about how many barrels, packages, or cases there were there.

Q. Look at these receipts and state whether these are the receipts that you gave.

A. Yes, sir, these are the receipts; all these receipts are in my handwriting.

Q. Is that your signature to them?

A. Yes, sir; that is my signature.

Q. In whose handwriting are the names of the articles themselves?

A. I wrote them myself. I took them from my memorandum and wrote them down that way.

Q. In whose handwriting is the body of that receipt?

A. I have not written that, but that is my handwriting below.

Q. Who brought you these receipts?

A. Mr. L. Meyer.

Q. Whose handwriting is that in these "from L. Meyer."

A. That is my own handwriting.

Q. Whose handwriting is that date, for instance, the 28th?

A. The date is my own. All that filling in of the name of L. Meyer in each of these receipts is in my handwriting, so are the numbers of the articles, so are the figures of the date of the month.

At the time I signed them we agreed that in case I should
415 have made a mistake and that he should find anything short he would not hold me responsible, and if there was anything more I should give it to him the same.

Q. What time of the day did you give him these receipts?

A. It was Sunday evening about six or seven o'clock.

Q. To L. Meyer or whom?

A. L. Meyer.

Q. You delivered them to L. Meyer?

A. Yes, sir; of course.

Q. Whose signature is that on the back of the receipts?

A. I know L. Meyer's signature, and I say that is L. Meyer's signature on each one of these five receipts. I have seen L. Meyer's signature so many times that I would take that to be L. Meyer's signature.

Mr. Browne, for the def'ts, offered in evidence the five receipts above referred to.

Mr. Phillips, for E. Dubois, a complainant, objects as the body of the receipts is not in the handwriting of the witness.

Q. Mr. Theard, one of the solicitors for one of these people, I don't know which one, states substantially that he went to your store and that either in answer to a question he asked you or by a voluntary statement on your part, he does not remember which, you said to him that if his client's goods were in there he might come and take them; that you made no claim on them, and also that you stated you did not know whose goods they were. I want you to state what your recollection of that conversation was and whether or not Mr. Theard's recollection is correct with reference to it.

A. I was going to state it was very incorrect; except I was
416 nearly crazy at that time I would not make such a statement. What he says is not so. If I am not mistaken somebody came and said, "There are our goods;" and I said, "If they are your goods take them; I claim nothing of the goods. I have no objection to you taking the goods if they are legally your goods." So he took them away.

Q. What was your statement with reference to who claimed these goods?

A. Mr. L. Meyer. I gave my keys to L. Meyer; that he put the goods in the store, but I did not know who owned them.

Q. Did you tell Mr. Theard that the goods were put in there by Mr. L. Meyer and were claimed by him?

A. If he asked me of course I told him.

Q. Did you tell him that you knew who put them in there?

A. I did not tell Mr. Theard that I did not know who brought the goods there, but I may have told him that I did not know whose goods they were.

Q. I suppose you don't know yet whose goods they were?

A. No, sir; I do not know at this time whose goods they were, but I know L. Meyer brought the goods there because I gave him my warehouse receipts.

Q. Who did L. Meyer claim the goods to belonged to?

A. He claimed them as his own goods.

Q. As whose goods did you receive them?

A. As Mr. L. Meyer's goods.

Q. The question has been asked here again and again about L. Meyer's failure. What is your recollection about the time of his failure? Was it immediately after the seizure of the store of
417 Dreyfus, or when?

A. If I recollect, L. Meyer failed six weeks or two months afterwards. I know that at least thirty days afterwards he had taken up some notes for insurance for a large amount, as he told me.

Mr. Phillips objects to what L. Meyer told the witness as evidence.

Q. Did you see the notes?

A. I cannot say exactly, I have seen so many; but I cannot swear that he showed me the note that he had taken up. I know that he told me.

Mr. Phillips objects.

WITNESS: I know that L. Meyer did not fail for thirty days, at least, from the time he put the goods in my store.

Cross-examined:

Q. Whose writing is this on the top part of this receipt?

A. I don't know.

Q. Did you not know that when the receipt was first brought to you it was in pencil?

A. No, sir; I know nothing about it.

Q. Did you not see the receipt in pencil?

A. I don't remember.

Q. Well, I would like you to remember.

A. I cannot, it is so long ago.

Q. You don't know whose handwriting this is?

A. No, sir.

Q. Was that written there when you put this at the bottom?

A. Of course it was.

418 Q. How do you know that it was there?

A. Well, it looks reasonable to suppose so.

Q. How do you know it was there? Do you swear positively that it was there?

A. Well, I suppose it was there; otherwise I would not have signed it.

Q. You cannot swear positively that it was there?

A. It is my opinion it was there; otherwise I would not have signed it below.

Q. I ask you whether that top writing—the whole body of this receipt on the top—was there when you filled in the different quantities that you put there?

A. Of course it must have been there; otherwise I would not have signed it.

Q. Do you swear that it was there?

A. Yes, sir; it may have been put in ink afterwards.

Q. Why should you suppose it might be put in ink if it was in pencil?

A. You say it was in pencil, but I have no recollection of it being that way; I cannot swear that it was in pencil.

Q. Did you not give these receipts on Monday?

A. No, sir.

Q. You did not?

A. No, sir; Sunday evening; it was in my dining-room on Sunday night.

Q. Where is your dining-room at?

419 A. Down-stairs, behind the parlor, at 655 Magazine street.

Q. That is your residence there?

A. Yes, sir.

Q. You gave the receipts on Sunday evening, you say?

A. Yes, sir.

Q. What time?

A. It was night already, about seven o'clock—maybe a little before or after seven, but about that time.

Q. That you gave these papers?

A. That I signed them.

Q. When did you hand these papers to L. Meyer?

A. Right after I had signed them.

Q. After you signed them you handed them to him?

A. Yes, sir.

Q. Who was present?

A. Mr. L. Meyer and my wife and children.

Q. Was anybody else there, outside of your family?

A. No, sir; I don't remember anybody outside of my own family.

Q. Did you see Mr. Erhmann there?

A. No, sir; I did not see him.

Q. You did not see him on that Sunday evening?

A. No, sir.

Q. Did you see him Sunday morning?

A. No, sir.

Q. When was the first time that you saw him?

A. That I cannot say; maybe on Monday or Tuesday; I don't remember.

420 Q. Where did you see him Monday or Tuesday?
A. I don't remember that I saw him.
Q. Did you have any conversation with him?
A. No, sir.
Q. Did he ask you any questions about these goods?
A. Of course; afterwards he came to my store.
Q. When was that; afterwards?
A. I cannot say; it is so long ago. I suppose it was Monday or Tuesday. How can I remember that?
Q. You remember so many other things, you should remember that.
A. Well, I do not.
Q. You don't know whether it was Tuesday, Monday, or Wednesday?
A. Well, I believe it was on Monday, the next day after the receipt was given. I really don't remember what conversation we had, except the first time I saw him. He said, "These goods I loaned money on." I said it was none of my business.
Q. You stated in your examination-in-chief that you had arranged it with Mr. L. Meyer that in case there were more goods you would account to him for them, and if there were less he was not to hold you responsible?
A. Because I could not take a memorandum of every barrel or gallon, or every basket or package, and in case there was a package or a basket missing he would not hold me responsible for it.
Q. Then this account that you have rendered here is a receipt for the goods?

Mr. Browne, for the defendants, objects to the words "ac-
421 count rendered" being applied to a warehouse receipt.

A. But afterwards the goods were all there.
Q. Then the receipt here which shows so many pipes of cognac and so many barrels and baskets—you don't know whether they are correct or not in that statement since you made that kind of an arrangement?
A. I know that the greatest part of it is correct, but in my mind I considered them correct, because the only objection I made when I told Meyer was, "If you make a mistake in a barrel, more or less, you must not hold me responsible, because I did not examine every piece of goods."
Q. Was Mr. L. Meyer there on Sunday night counting the number of packages with you?
A. No, sir; he was not.
Q. Was he there Monday morning?
A. I don't remember that.
Q. When was it that Mr. L. Meyer counted these goods with you—the number of barrels and packages?
A. He has never counted them to me. He has never done that.
Q. How did you count them?
A. I counted them myself. I took a memorandum of how many

packages, so I knew there were twenty baskets of champagne and seventy-five packages of liquors, and so on.

Q. Did you take the memorandum as the goods arrived at the store?

A. No, sir.

Q. Who received these goods at your store?

A. Mr. Meyer himself.

422 Q. Did he hand you the memorandum of the goods?

A. Yes, sir; he handed me the memorandum of the goods.

Q. Why did you count the goods after he had given you the memorandum?

A. Because I wanted to know if it was correct.

Q. Why, then, should you have stated to him that if you were short he was not to hold you responsible, and if there was more you should give them back to him?

A. Because in the packages coming in there might be a package more or less.

Q. You stated in your examination in court, when you were giving your testimony before Judge Billings, that you stayed in your bed and did not go down until the next morning?

A. No, sir; I never stated that.

Q. Did you not state that you did not go down to the store until the next morning?

A. No, sir; I did not.

Q. What time did you state you went down to your store?

A. Well, it was about an hour afterwards.

Q. What hour did you state you left your house and went to your store?

A. I don't remember exactly. I know when I left the house and I know how long it takes me to walk down—a half or three-quarters of an hour.

Q. What time did L. Meyer come to your house to get the keys?

A. A little after one o'clock or, say, about one o'clock.

Q. And you swear that he did not tell you where he was

423 taking these goods from?

A. I never asked him.

Q. I ask you did he tell you where he was taking these goods from.

A. No, sir; he did not tell me where he was taking these goods from that night or in the morning.

Q. And you did not know it on Monday?

A. Until they were seized, then I found out—all the world knew it—that they came from Joseph Dreyfus' store.

Q. Did you not see it in the paper Sunday evening?

A. I heard of it, but I did not read the paper that evening.

Q. Where did you hear it talked about?

A. I heard some people say there was something in the paper that evening.

Q. Did you hear what it was?

A. That Dreyfus' store was seized.

Q. Do you remember what time it was in the evening?

A. Four o'clock.
Q. That was a long time before the goods were in your store?
A. No, sir; the goods were in my store on Sunday morning. You are trying to confuse me. If they were in the newspaper Sunday evening they must have been in my store on Sunday morning.
Q. Then at four o'clock Sunday evening you heard about it in the newspapers that Joseph Dreyfus' store was seized?
A. Yes, sir.
Q. And that the goods had gone down to your store?
424 A. No, sir; I don't know anything about that.

By Mr. LABATT:

Q. You did not know that on Sunday that it was published in the newspapers?
A. I knew that Joseph Dreyfus was seized.
Q. But you did not know that your name was mentioned?
A. No, sir; I did not.

By Mr. PHILLIPS:

Q. Did anybody read the paper for you?
A. No, sir.
Q. Did anybody tell you the contents, what was in the paper?
A. No, sir; not much.
Q. How much did they tell you?
A. Nothing at all.
Q. What did they say to you?
A. Nothing.
Q. How do you account for saying that it was from Dreyfus' store if they told you nothing?
A. I did not hear that.
Q. You said it was from Dreyfus' store?
A. No, sir; I said Dreyfus' store was seized.
Q. How much storage did you charge L. Meyer for these goods?
A. I have not got any storage yet up to date.
Q. How much were you to charge?
A. Well, I charge about ten cents a package for a month.
Q. How much were you to charge?
A. We never made an arrangement. He never asked me
425 beforehand what my charges were to be.
Q. What business was L. Meyer in?
A. The commission business.
Q. What was he selling?
A. Coffee, sugar, flour, groceries.
Q. Was he selling liquors, champagne, etc.?
A. He was selling all kinds of grocery goods.
Q. Did he have such goods in his store that night?
A. I don't know what he had.
Q. Have you been in his store often?
A. I don't know that I was in his store but once in my life—years ago.
Q. How many years ago?

A. I don't know; I was not there very long. I went there to buy some empty hogsheads and barrels.

Q. Did you see all these goods that you mentioned in his store?

A. No, sir; I did not go to his store to see goods.

Q. But the first time that you were there did you see the goods there that you mention now?

A. No, sir.

Q. Then why do you mention that he had coffee, sugar, and such things?

A. I know by hearsay. I know that Schmidt & Zeigler have them in their store.

Q. Then you don't know that he had any of these goods at all of your own knowledge? You don't know of your own knowl-
426 edge that he had these groceries in his store? Answer yes or no.

A. What groceries do you mean?

Q. The groceries you just mentioned—sugar, coffee, liquors, and merchandize.

A. You want to know if he had them in his store?

Q. Yes; did you see them in his store?

A. I have not been in his store.

Q. You say you went there once.

A. To buy some empty hogsheads.

Q. Did you see these goods there at that time?

A. I don't remember what I saw in his store now. I seen goods, but I don't know what goods they were. I did not take an inventory of them.

Q. You don't know what they were?

A. No, sir.

Q. Where was this store at?

A. I believe it was — Tchoupitoulas, either between Common or Gravier or Common and Canal streets.

Q. How large a place was it?

A. It was about as wide as this room, but much longer. He had a deep store; he had two doors.

Q. Do you recollect the month of the year that you went there; what year was it?

A. It was in 1883.

Q. Do you recollect the month?

A. No, sir.

Q. Do you know that Mr. Dreyfus had his paper on the
427 market a day before his failure?

A. No, sir.

Q. Did you hear of it?

A. No, sir.

Q. Did you have any conversation with regard to these goods that you had in your warehouse with any one connected with him?

A. With Dreyfus?

Q. Yes.

A. No, sir.

Q. You stated in your examination-in-chief that if you had known

that the goods came from Dreyfus' store that you would not have received them at your warehouse.

A. I would not.

Q. Why?

A. Because I and Mr. Dreyfus had not for five years spoken together. We were not friendly; not on friendly terms. I would not have received any goods from Joseph Dreyfus not for more than ten times the amount of the storage.

Q. How long have you kept a warehouse?

A. Well, for the last three years. I quit my hardware business. I quit it in 1882, in January, and commenced to liquidate, and up to this time I have not bought a dollar's worth of hardware goods. My store is 124 feet deep and four stories high.

Q. Did Mr. Meyer tell you how long he wanted you to keep these goods in that warehouse?

A. No, sir; he never told me.

Q. You say you signed the receipts on Sunday?

428 A. Yes, sir.

Q. At your house.

A. Yes, sir.

Q. Why did you not wait until Monday?

A. Because Mr. Meyer asked me for them in the evening, and of course I gave it.

Q. Was he very anxious to have them on Sunday?

A. Well, I had not examined his pulse at that time.

Q. Now, I will ask you this question over again. You see you detain yourself here by answering that way. I asked you whether he was very anxious to have his receipts on Sunday. That is a proper question.

A. I don't know.

By Mr. LABATT:

Q. Was he nervous and excited?

A. No, sir; he was not excited.

Q. He was cool?

A. He was cool.

Q. You say that after the first application made by Mr. Meyer to you you met him on Canal street, during Saturday, you think?

A. He came Friday morning to my office and asked me if I could give him some store room, and I said I had no objection. He said, "Have you room?" and I said I had room. I would make room. That was all. That was all the conversation I had on that day, Friday.

Q. Did you see him on Saturday?

429 A. Saturday morning.

Q. Where?

A. Saturday morning between eight and nine o'clock I met him on Canal street. I met him on Saturday morning.

Q. There it was arranged with you that he was to bring the goods to your store after midnight, was it not, and to get your key when he came for it?

A. You may take it as you want it. He asked me for the keys right off on Canal street. He said, "I am ready; give me your keys;" and I said, "Meyer, I do not open my store on Saturday. I do not put any goods in my store on Saturday." Then I told him he could come to-morrow morning. I asked him why he was in a hurry, and he said, "I go away to-morrow morning at seven o'clock." I knew, he had a store in Thibodeaux and every Sunday he went there. I asked him if he was in a hurry, and he said he had to go at seven o'clock. Then I said, Meyer, you can have my keys to-morrow morning any time before daylight if you like.

Q. After all that you yourself said and all that he said did you then agree and did he agree that he would put the goods in your store after midnight if you would let him have the key, or did he go off?

A. No, sir; it was agreed, if there was no other way, of course, to come to morrow morning.

Q. Did he say he was coming for the key that night?

A. No, sir; he did not say that he was coming in the evening, and I saw him at my office after the day was over. I told
430 the watchman then when Meyer was going away. I told him to come to-morrow morning or before. I told the watchman this: "Mr. Meyer may bring goods to my store; let him do it," because something happened once before and the watchman came to my house and I thought there was something wrong.

Q. It was understood between you that Saturday night that he was to come and get your keys at your house, and after twelve o'clock at night to put the goods in if they chose?

A. I did not say twelve o'clock at night, but if he came at any time before daylight in the morning he should have the keys. I did not say twelve o'clock or one o'clock. I expected he would come at six o'clock.

Q. You were very much surprised that he came at one o'clock?

A. Yes, sir; I was.

Q. Now, you gave him the key and he opened your store and received the goods in there before you came down from your house?

A. Yes, sir.

Q. Who receipted for the goods in your name in order to show that you were receiving them? Who wrote the receipts for the goods to show that they came into Meyer Weill's store; wasn't it L. Meyer?

A. I don't remember.

Q. Did you sign any receipt?

A. No, sir; no receipt until the evening.

Q. Who received the goods at your store before you came and after you came?

A. Mr. L. Meyer.

431 Q. You did not sign anything?

A. No, sir; I did not sign any receipt.

Q. You did not go out to see whether it was coming in right or wrong; you did not take possession?

A. No, sir.

Q. You took no possession of these goods at night?

A. No, sir.

Q. You are a regular merchant and you have a regular set of books?

A. Yes, sir.

Q. All of them—ledger, cash book, and the others?

A. Yes, sir.

Q. You have your regular bill-heads?

A. Yes, sir.

Q. And you have your regular paper that you issue from the office when you sell anything or when you give receipts. If a person comes in to you to give you money you have your regular bill-heads to make a receipt on?

A. No, sir; I have not any of them.

Q. Now, I want you to look at this paper, on which the receipts are written that you have testified to, and tell me if you recognize where this paper came from; whether it is merchants' paper or paper taken out of some old copy book.

A. I know that this paper was not taken out of any of my books.

Q. Do you not discover from an inspection that they seem to have been torn out of a copy book?

A .It looks so, that it came out of a blank book.

432 Q. You do not recognize it as paper that was in your possession previous to the signing?

A. No, sir.

Q. Who brought these papers for you to sign in the condition they are before you added anything to them?

A. Mr. L. Meyer.

Q. When you signed them were any other receipts given up to you by him?

A. I don't remember that.

Q. You did not verify it by any other receipts?

A. I had a memorandum in pencil on the back of it; was correct. In case there was a barrel short he was not to hold me responsible.

Q. The goods received from the drays were just put into the store as they came there, nobody signing any receipt in your name?

A. No, sir; they were not signed. The door was opened wide on Clinton street, and the goods were put in there. I was in the front office.

Q. You signed no paper stating that you had received these goods at night, and Mr. Meyer signed none in your name; you authorized none?

A. No, sir; I did not.

Q. How did it happen that he came up to your house at about dark to get these receipts signed?

A. He told me so in the daytime that he would come in the evening.

Q. Did he say why he should come to your house to disturb yourself and your family?

433 A. No, sir; he came in the evening with the papers and said, "Meyer (Weill), give me my receipts." Of course I held

my memorandum that I had got signed for the amount of the goods that I had received.

Q. You remember that on Monday a great many creditors came to your store and were seizing these goods?

A. Yes, sir.

Q. Did you warn them not to seize them; did you tell them not to seize them?

A. I made no effort to prevent anybody from seizing them.

Q. You were sitting in your office in front whilst they went back and looked at the goods?

A. Yes, sir; yourself (Mr. Labatt) came there; I was with you there.

Q. You did not say, "Gentlemen, these goods are in my possession. I have given my receipts for them, and I warn you not to touch them"—you did not say that?

A. No, sir; the marshal came there once.

Q. When did Mr. Lehmann Meyer appear on the ground and claim these goods in your possession after you had signed the receipts that Sunday?

A. After that Sunday he did not claim them.

Q. He never claimed them in your presence?

A. No, sir.

Q. When did Mr. Erhmann come and claim them in your possession?

A. I believe it was on the Monday afterwards.

Q. What did Erhmann say to you?

A. That they were his goods; that he loaned money on them.

434 Q. Did he come by himself, without a lawyer?

A. I don't remember that.

Q. Did you tell him he had better take a lawyer and recommend anybody, and go with him to the lawyer's office?

A. I may have told him afterwards.

Q. Did you tell him to get a lawyer?

A. Yes, sir.

Q. Whom did you tell him about?

A. Singleton & Browne. He was a stranger. He said to me, "I am a stranger, and they all want to fight me. Who is a good lawyer?" And I told him Singleton & Browne, and I would go with him.

Q. That was the Monday after the Sunday on which you signed the receipts?

A. Yes, sir; but I don't remember whether it was the same day or the next or three days afterwards. On Monday Mr. Erhmann came to me, but I don't know the day when I brought him to Singelton & Browne.

Q. Did you tell Erhmann that people had been seizing them?

A. He knew it without my telling him; but I don't remember telling him.

Q. When you came to sign the answer that you put in when you were interrogated, how many days after Monday was that? Do you remember?

A. When?

Q. You were asked whose goods these were and if you had any goods of Dreyfus' in the interrogations in this case.

A. I have not received any goods from Dreyfus.

435 Q. But you were asked that question, whether you received any goods from Dreyfus, and your answer to the interrogatories was that you had none of Dreyfus'.

A. No, sir; of course not. Of course I did not receive anything from Dreyfus. I did not; I did not want to know him.

Q. You did not know whether these were Dreyfus' goods or not?

A. I know they were L. Meyer's goods.

Q. You knew they were L. Meyer's goods?

A. I knew they were L. Meyer's goods.

Q. Because he put them in your store?

A. Yes, sir; because he put them in my store. I did not know whether he had stolen the goods or not.

By Mr. PHILLIPS:

Q. Did you inform your watchman that he was not to prevent any goods from coming in; and what was his reply to you?

A. He said it was all right.

Q. Did he not state that he did not care how much goods came in, but none should come out?

A. I believe he did say something of that kind.

Q. What time did you inform your watchman that goods were going to come into your store Sunday night—what time did you inform him of that?

A. About seven o'clock, when I left my office on Saturday night.

Q. Then, on Saturday evening at seven o'clock you informed your watchman?

A. Yes, sir; it was very close about that time.

436 Q. That goods were coming in that night?

A. No, sir; that goods might come before to-morrow morning, "before you go away from your beat, and do not interfere" in case goods come in before you go away from your beat; before daylight do not interfere.

Q. What time does he leave his beat?

A. At daylight.

Q. What time?

A. What time is daylight in October?

Q. I am asking you; you must not ask me.

A. Do you know it?

Q. Yes; I know it.

A. What time is it?

Q. Five o'clock.

A. Then he leaves at half past five about.

Q. Did you see these drays when they came there with the goods or the floats or whatever they were?

A. I believe I saw some of them; yes, sir.

Q. What was the first float—what hour did you see it?

A. I don't remember. I was not there when the first load came.

Q. What hour was it you saw the first float?

A. I don't remember that.
Q. You stated that you got there about half past one o'clock.
A. Well, a little later.
Q. What hour was it that you got there?
A. Between one and two o'clock, perhaps.
Q. How many floats did you see come along there?
437 A. I saw coming in one dray or float—I don't remember whether it was a dray or a float—when I was going back to my office, and I stayed there until daylight.
Q. Did you ever do that before?
A. Do what?
Q. Sit up from one to two o'clock receiving goods at your store?
A. No, sir; I did not.

By Mr. BROWNE, re-examined:

Q. Did the number of packages turn out to be correct according to these receipts?
A. Yes, sir.
Q. Do you know how many dray-loads came in before they stopped coming in and more came at daylight?
A. I believe three came in—not less than three dray-loads. Then they stopped until daylight and then they commenced again.
Q. Did you go with Mr. Erhmann to Singleton & Brown's office on Monday, or was it on some subsequent day?
A. I believe it was on Monday.
Q. Are you sure of that fact?
A. Well, you (Mr. Browne) ought to know it, but I believe it was on Monday. I cannot swear to it.

By Mr. PHILLIPS:

Q. Did you not get some security from somebody to secure you in this case? Did you not inform me that you had got security to secure you in this case?
A. Security for what?
Q. I don't know whether it was a bond of indemnity or
438 not, but did they not give you security for going on the bond?
A. Yes, sir; I went on the bond for Erhmann. He wanted to take the goods away, and I would not let him until he gave me some showing for it.
Q. What showing did he give you?
A. He gave it to me in writing.
Q. Whom did he give you?
A. Nobody, but a writing.

By Mr. BROWNE:

Q. How many months did these goods remain in your store before any of them were removed?
A. About two or three months, I believe. I don't remember exactly, but some time. About two months, I believe, they were in my store.

It is agreed that the above statements in the testimony of Meyer Weill may be accepted as the statements of David Levi, defendant, his partner in business.

S. GUMBEL, a witness produced, sworn, and examined for the defendant, says:

By Mr. BROWNE:

Q. Mr. William Stein has stated in his testimony in these cases that on Sunday, the night of the Dreyfus seizure (the seizure being made on Sunday), that you and two other Gumbels were on Gravier street, between Tchoupitoulas and Magazine, on the upper side of Gravier street, walking backwards and forwards, between the hours of half past eleven and 1 o'clock. Is that so?

439 A. I was there with my brother.

Q. Which one?

A. Cornelius and Ferdinand Gumbel.

Q. Do you know A. Erhmann, of Morgan City?

A. Yes, sir.

Q. Do you know him well?

A. Well, I know him.

Q. How long have you known him?

A. I have known him seven or eight years.

Q. William Stein has stated that A. Erhmann was there with you three gentlemen walking up and down there that night. Is that so?

A. No, sir; he was not there that night.

Q. Now, he also stated that he saw Mr. Erhmann on the gallery of Mr. Joseph Dreyfus on Sunday afternoon before five o'clock, walking up and down the gallery or piazza with two of the Gumbels. Now, I ask you if you were there on Joseph Dreyfus' gallery on Sunday afternoon, the date of the Dreyfus seizure, October 28th, 1883, at any time walking up and down the gallery with A. Erhmann?

A. I was at Joseph Dreyfus' gallery that same Sunday he was seized. I went there to see my brother, Cornelius Gumbel, with Isac Levi. I presume we stayed there ten or fifteen minutes, and we left.

Q. Was A. Erhmann walking up and down that gallery with you?

A. No, sir; he was not. I did not see him there then while I was there.

440 Q. What time was that?

A. It was after my dinner, between four and six o'clock.

Cross-examined by Mr. LABATT:

Q. Did you see Mr. Joseph Dreyfus that evening in his house?

A. I did not go into his house.

Q. You stayed on the gallery?

A. Yes, sir; on the gallery; I did not see anybody else but my

brother and his wife come out. It was a rainy day, and they called me in.

Q. When you left did you leave by yourself?

A. I left with Mr. Isac Levi.

Q. You did not leave in a cab?

A. No, sir.

Q. Did you see a cab come up there that evening?

A. No, sir; I did not.

Q. Did you see a cab come up there the next evening?

A. No, sir.

Q. You were not one of the parties that were there in a carriage or cab?

A. No, sir.

Q. Might not Mr. Erhmann have been in the house without you seeing him?

A. Certainly.

Q. Might he not have been on the street at the time he is said to have been walking up and down?

A. Certainly he could have been there.

441 Q. You only say that you do not recollect seeing him and were not in his company?

A. Yes, sir.

Q. Have you got a claim against Dreyfus also?

A. Yes, sir.

Q. How much is it?

A. $2,000.

Q. How is it evidenced—an open account or a note?

A. It is a note.

Q. What was his commercial standing for one or two weeks before his failure? Was it not very much shaken or disturbed or destroyed?

A. I consider it improved, because I loaned him some time during the summer—I believe I loaned him $4,000 or $5,000, and the note was to be due in September, and he paid me half of the note, and the other half, $2,000, I extended for thirty days, expecting it was all right.

Q. He was unable to pay you?

A. He told me he could not pay me at present, and to extend half of it.

Q. Did it come to your knowledge what was his financial condition for three or four weeks before his failure?

A. No, sir; I did not; I considered him good, because I had his note.

Q. Have you not ascertained since that his credit was destroyed several weeks before his failure?

A. Yes, sir; but I did not know it then.

442 Q. Were you present at the meeting of his creditors at the St. Charles Hotel?

A. No, sir.

Q. Was there any proposition made to you to settle at so much after this affair?

ally classified into actual and constructive." "The legal and practical purposes of the generality of cases may be regarded as most simple and easy of application; that notice is actual when there is positive information of a fact, and constructive when the information is either conclusively or *prima facie* presumed from certain existing facts; when not conclusive, being strictly implied or inferred notice. Conclusive constructive notices allow no proof of want of information, but when implied, the presumption may be rebutted; either, when established, having the same legal effect. Knowledge may also be classified, in a legal sense, as positive and imputed—imputed, when the means of knowledge exists, known and accessible to the party and capable of communicating positive information. *When there is knowledge, notice, as legally and technically understood, becomes immaterial.* It is only material when, in the absence of knowledge, it produces the same results. However closely actual notice may, in many instances, approximate knowledge and constructive notice may be its equivalent in effect; there may be actual notice without knowledge, and when constructive notice is made, the test to determine priorities of right, it may fall short of knowledge and be sufficient. When the purpose is to subordinate to a prior existing equity or right in another, the subsequently acquired right of a party who has information of collateral facts sufficient to put him on inquiry, which, if pursued, would lead to the truth, such information is regarded as sufficient to charge him with notice of the ultimate fact, but is not tantamount to either knowledge or express notice, nor is either a necessary inference." Wade Notice, §§ 3, 10, 36 *a*; 2 Pom. Eq. Jur. §§ 592, 593. "When a party sets up, in equity, the defense of being *bona fide*, he is required to deny, not merely knowledge, but

brother and his wife come out. It was a rainy day, and they called me in.

Q. When you left did you leave by yourself?

A. I left with Mr. Isac Levi.

Q. You did not leave in a cab?

A. No, sir.

Q. Did you see a cab come up there that evening?

A. No, sir; I did not.

Q. Did you see a cab come up there the next evening?

A. No, sir.

Q. You were not one of the parties that were there in a carriage or cab?

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Q. He was unable to pay you?

A. He told me he could not pay me at present, and to extend half of it.

Q. Did it come to your knowledge what was his financial condition for three or four weeks before his failure?

A. No, sir; I did not; I considered him good, because I had his note.

Q. Have you not ascertained since that his credit was destroyed several weeks before his failure?

A. Yes, sir; but I did not know it then.

442 Q. Were you present at the meeting of his creditors at the St. Charles Hotel?

A. No, sir.

Q. Was there any proposition made to you to settle at so much after this affair?

A. I remember being once at Mr. Dinkelspeil's, and Mr. Dinkelspiel asked me, in case Dreyfus would pay me a certain amount, if I would take it.

Q. Do you remember what amount it was?

A. I really cannot remember, but thirty or forty cents on the dollar.

Q. Was that offer made with the view of resuming business?

A. I suppose so; I don't know it. It was made by Mr. Dinkelspiel. He only asked me if I would be willing to take a certain amount for my claim.

By Mr. PHILLIPS:

Q. Did you get a mortgage from Mr. Dreyfus?

A. No, sir.

Q. Did any of your brothers get a mortgage from Mr. Dreyfus?

A. I don't know.

Q. Did they ever inform you that they had got a mortgage from Mr. Dreyfus?

Mr. Browne, for the defendants, objects, as the mortgage itself is the best evidence.

A. No, sir.

Q. You say none of them informed you that they had received a mortgage from Dreyfus?

443 A. Not that I remember.

Q. Were you with Dreyfus on the 27th, the night before his failure?

A. You mean on Saturday night?

Q. Yes.

A. No, sir; I was not at Mr. Dreyfus' house.

Q. Did you see the evening papers on Sunday—The Item?

A. Yes, sir; I presume I did.

Q. Did you then see his failure mentioned in the paper?

A. Yes, sir.

Q. Did you go to his house then?

A. I was to go to my brother's house.

Q. Did you go to Dreyfus' house that evening after that?

A. I went to Dreyfus' house. I went there because I called at my brother's house and his servant told me that he was at Mr. Dreyfus'; consequently I went there. I did not go into the house, but on the gallery.

Q. Did you not go to see Dreyfus at all?

A. No, sir.

Q. And you did not go there to see about securing your claim after reading of his failure?

A. No, sir; I did not go there to secure my claim, because I had a warrant in the sheriff's hands at the time, and it was to be seized. That was the reason I was there on Sunday night.

Q. But you read this in the paper what time Sunday evening?

A. I don't remember.

444 Q. Was it before dark?

A. I presume it was before dark.
Q. Can you not remember it was before dark?
A. No, sir; not after so many months.
Q. Was it after you read it in the paper that you went to Dreyfus' house?
A. I don't know that I did read the paper, but I think I did.
Q. But after you heard it you went to Dreyfus' house?
A. I went there as I told you. I went to see my brother, who was at Dreyfus' house.
Q. You went to see your brother and went to Dreyfus' house at the same time?
A. Yes, sir.
Q. Did you see any of you brothers on the gallery when you arrived there?
A. No, sir.
Q. How did you get in?
A. I rang the bell and somebody came out, and I asked if my brother was in, and I was told yes, and I told them I wanted to see him.
Q. You did not go into the house at all?
A. No, sir.
Q. You do not know who was in the house?
A. No, sir.

By Mr. LABATT:

Q. Early on Saturday, October 27th, 1883, had you begun to move in relation to your attachment that you speak of?
A. My brother came to me about four or five o'clock in the
445 evening and asked me if Dreyfus owed me anything, and I told him he owed me $2,000, and he said, "You had better look out for it." That was the only way I knew anything about Dreyfus' business.
Q. Your brother Cornelius told you that you had better do something to secure you debt?
A. Yes, sir.
Q. He knew there was something to be done that night?
A. I presume he did.
Q. You took steps immediately, then, to secure your debt?
A. Yes, sir.
Q. You went to Mr. Dinkelspiel, of Braughn, Buck and Dinkelspiel?
A. Yes, sir.
Q. What time was it that your brother told you that?
A. Between four and five o'clock somewheres.

By Mr. PHILLIPS:

Q. Did you see any goods removed while you were there walking up and down that Sunday evening?
A. No, sir.
Q. How late did you stay there?
A. We stayed there until about twelve o'clock.

Q. Did you not stay there later?

A. No, sir; we stayed there to see if the sheriff went to make his demand on the store, because we were all interested in it.

Q. You are positive that you left at twelve o'clock?

A. Yes, sir.

Q. Who accompanied you when you left?

A. My two brothers.

446 By Mr. BROWNE, for defendants:

Q. It was a mere presumption that there was something wrong when your brother told you to look out; you did not know of anything wrong?

A. No, sir.

Q. Is it true or is it false, that statement made by William Stein in his testimony, that A. Erhmann was with you and your brothers on Sunday night between the hours of half past eleven and one o'clock, October 28th, 1883, the night of the seizure? Is his statement true or untrue?

A. I had not seen the man.

Q. If he had been there with you would you have seen him?

A. Yes, sir; I presume I would if he was there.

Q. Would you not have seen him if he was there?

Mr. Phillips objects to the question as leading.

A. I suppose I would.

Mr. Labatt, for complainants, here offers in evidence the record of the suit of S. Gumbel against Joseph Dreyfus, No. 9663 of the civil district court, parish of Orleans, and the attachments in cases Nos. 10355 and 10359; also the record in the suit of C. Gumbel against Joseph Dreyfus, No. 9662 of the civil district court, parish of Orleans.

Mr. Browne, for defendants, by way of objection, states that if any part of the above records are offered the entire records must
447 be offered; and he further objects to the introduction of these records because they are irrelevant, illegal, and are not admissible under the bill filed in this case.

Mr. Labatt also offers in evidence the records in the suits of S. Jacoby against Joseph Dreyfus and Feiberg & Workum against Joseph Dreyfus, Nos. 10371, 10379 of the United States circuit court, on the law side, and the affidavits filed therein, which it is agreed shall be used in this case.

Testimony Offered by Defendants and Filed 30 *Nov'r*, 1885.

A. C. Hutcheson 1
U. Marinoni 7

United States Circuit Court, Eastern District of Louisiana.

H. WEILLER *et als.*
vs.
JOSEPH DREYFUS *et als.* } No. —.

448 NEW ORLEANS, *June* 3, 1885.

Testimony resumed on behalf of defendants this day before A. G. Brice, Esqr., special examiner.

Present: R. H. Browne, Esq., for the defendants; D. C. Labatt, Esq., for the complainants.

A. C. HUTCHESON, a witness produced, sworn, and examined on behalf of defendants, says:

By Mr. BROWNE:

Q. What is your business?
A. President of the Morgan Railroad and Steamship Co.
Q. How long have you been such?
A. Two years, I believe.
Q. Prior to that time what relation did you occupy to that road?
A. I was a member of the firm of A. C. Whitney & Co., managers.
Q. Did you ever know one Abram Ermann, of Morgan City?
A. Yes, sir.
Q. How long have you known him?
A. I have known him for the last twelve years, about.
Q. What was the character of the transactions you had with him, if you had any? I mean business transactions.
A. I had various transactions with him; I bought a great many ties from him; he was a contractor to furnish ties.
Q. Were they small or large transactions?
A. Large transactions.
Q. Was he a man of means, or do you know anything about that?
449 A. I don't know anything personally about his means.
Q. In the transactions you had with him what would these transactions indicate as to his means?
A. Well, they would indicate that he must have had considerable funds to have furnished the very large amount of ties that he did.
Q. What position does he occupy, in your estimation, as to his business integrity and honesty?
A. In all of his transactions with us they were without blemish, very fair, straightforward, and always maintained his agreements. We never had any differences with him.

Cross-examined by Mr. LABATT:

Q. Were his business relations with you many previous to 1883?
A. Yes, sir; he furnished ties and sometimes ice to the road.
Q. To the road?
A. Yes, sir; and to our steamships sometimes he supplied ice. He kept an ice-house.
Q. Did he have any other business besides furnishing ties and keeping an ice-house?
A. He kept a store.
Q. What kind of a store was it?
A. General merchandize.
Q. How large?
A. A country store. I should say he had the principal store in Morgan City.
450 Q. But in Morgan City a store of a country character is small compared to business stores in the city?
A. Yes, sir; as compared with these large houses.
Q. Were there some dry goods, etc., in it?
A. Yes, sir; everything. Dry goods, boots and shoes, hardware, etc. He furnished all our ties, and also furnished ties for the construction of the Louisiana & Western road; and in furnishing these ties he had to furnish the negroes or men who were getting out the ties.
Q. Do you know anything about what capital he used of his own?
A. No, sir; I cannot tell that. We paid him large amounts of money. We paid him, I think, as high as $20,000 at a time.
Q. He had large amounts to pay out also?
A. Yes, sir; I presume so.
Q. Do you know anything about his being a man of fortune or a capitalist who invested money in pledges?
A. No, sir; I knew nothing of that.

Adjourned to Thursday, June 4th, 1885, at 2½ o'clock p. m.

H. WEILLER & Co. *et als.*
vs.
JOSEPH DREYFUS *et als.*
} No. —.

NEW ORLEANS, *June* 4, 1885.

Testimony for defendants resumed this day before A. G.
451 Brice, Esq., special examiner, as per adjournment.
Present: R. H. Browne, Esq., solicitor for defendants; D. C. Labatt, Esq., solicitor for complainants.

U. MARINONI, a witness produced, sworn, and examined on behalf of defendants, says:

By Mr. BROWNE:

Q. What is your present business?
A. At the present time I am president of the People's Bank.

Q. What were you in September, 1883?
A. The same.
Q. Were you acquainted with Joseph Dreyfus?
A. Yes, sir.
Q. How long have you been acquainted with him prior to his failure?
A. I think I am acquainted with him since 1865, 1866, or 1867.
Q. What is the nature of your transactions and your familiarity with him before that time?
A. Well, I was an importer of wines, liquors, oils, etc., and he dealt with me.
Q. In small or large amounts?
A. In large amounts; sometimes he made bills of $1,500 or $2,000.
Q. What was his standing as a merchant up to just prior to his failure?
A. It was a very good standing, I think, to my knowledge.
Q. Did he do business with your bank?
A. Yes, sir; he did.
452 Q. There has been testimony given here stating that he was embarrassed before his failure in October, 1883, and that you had seen him with reference to it. Just state, as nearly as you can, what occurred between you with reference to that and how long before his failure, if you can remember.
A. Well, I cannot remember exactly, but I think it must have been at least one month before. There had been a certain party—I don't know whether it is Stern or somebody else—came two or three times trying to sell me one of the notes of Joseph Dreyfus, and I told him I was not in that kind of business. He offered me a certain discount. It was then I got a little anxious with regard to his financial position; and one day I was talking with Mr. Wilcox, of the Bradstreet Mercantile Agency, and we spoke about Mr. Joseph Dreyfus. I said, "I don't think he is in very critical circumstances. I think he is more embarrassed than anything else."
Q. What do you mean by "embarrassed"—just for the time being?
A. Yes, sir; just for the time being. Sometimes a merchant may be perfectly solvent, but short to meet certain payments. So I told Mr. Wilcox if I was in Joseph Dreyfus' place that I would have either sold or mortgaged his property on Josephine street. I think that Mr. Wilcox told me at the time that there was no incumbrance on the property, from what I recollect. Then I said it would be much better to sell or to mortgage the property and get easy in his business; and Mr. Wilcox told me that if he wanted money on his property, knowing that it was not incumbered, he would be
453 ready to give it to him. I told him I would see Mr. Dreyfus and I would make him the offer. I then went to Mr. Dreyfus and asked him about his business, because I was intimate with him, and he told me that he thought he would be able to bridge over; only that there were some rumors going round, and that the Northern and Western men were trying to press him. During the month in which we spoke together he told me that he had only a

couple of notes to pay—a $5,000 note and some trifles more, and if he could meet these payments he would be all right. Then I said, "You have got property not incumbered; why not sell it or raise a mortgage on it. I may have a man that may advance you the money in that way, either buying or mortgaging the property." Then he said. "Well, no; I don't need that." That is all.

Q. Are you certain that it was as much as a month before his failure?

A. Well, about.

Q. Because Mr. Meyer fixes it not very long before the failure?

A. Well, I cannot say, because it is a long time ago, and it was a matter that did not touch my interest.

Q. Do you remember how long after you had this conversation that you heard of his failure?

A. About two or three weeks.

Cross-examined by Mr. LABATT:

Q. Had you heard from other persons of his being in an embarrassed situation previous to your going to him?

454 A. Well, I had occasion to speak to Mr. Wilcox.

Q. Did you speak to anybody else—Mr. Stern?

A. Mr. Stern came to me two or three times—twice, anyway, that he came—offering me to discount the paper of Dreyfus.

Q. At what rate?

A. Well, he said he would give me a fine rate, meaning more than is usually given.

Q. Did he intimate anything to you in relation to the apprehension he had of his failure?

A. No, sir; it was apparent from the fact of his offering to me the note.

Q. He was so earnest and zealous in trying to sell you the paper at a large discount that you thought there was some trouble taking place?

A. Yes, sir.

Q. Did you go immediately after that to see Dreyfus, or did you wait some days?

A. I think one or two days afterwards.

Q. Did you see him at his store?

A. Yes, sir; I saw him at the sill of his store.

Q. And he told you he was embarrassed for the means of paying monthly payments?

A. Well, he spoke of a $5,000 note and some other little things.

Q. Was anybody else present?

A. No, sir.

Q. Do you know Mr. Lehman Meyer?

A. Yes, sir; but he was not present.

455 Q. Did the bank do any business with him after his paper was offered to you at that large discount?

A. No, sir; neither did he ask, nor had we occasion to refuse.

Q. Did you hear of the midnight removal of the goods from his store afterwards?

A. Well, it was common talk.
Q. How long after it happened did you hear it?
A. I know that it had been on Sunday.
Q. Did you see it in the newspapers afterwards?
A. Well, I think I may have seen it in the paper, but I know it was common talk at that time.

By Mr. BROWNE:

Q. If I recollect aright, Mr. Lehman Meyer stated that he heard this conversation between you and Dreyfus?
A. I don't believe he did. He may have heard it from Joseph Dreyfus himself, because I recollect now that when I came away from the store—I think that Lehman Meyer had a small store between Canal and Common streets—and in passing by I saw him there. If my recollection is right, although I will not swear that, I think he heard it from Mr. Dreyfus.
Q. Dreyfus' standing here as a merchant has always been of the highest before that time, as I understand it?
A. Yes, sir; everybody would like to sell him. I suppose my trade with him used to be from $14,000 to $18,000 every year, in my line. He was doing a very large business, and I never had any occasion to renew when he bought at 60 or 90 days. He never asked me for a favor.

Testimony for defendants closed, the right being reserved to offer documentary proof at the trial.

456 *Testimony of William Stern, Taken in Open Court before the Hon. Edward C. Billings, with a Jury.*

W. H. MEILLER & Co.
vs.
JOSEPH DREYFUS. } No. 10371.

NEW ORLEANS, *February* 19, 1884.

Present: D. C. Labatt & L. L. Labatt, Esqs., for plaintiffs; Singleton, Browne & Choate, Esqs., for intervenor and third opponent; A. H. Leonard and Morris Marks, Esqs., for defendants.

WILLIAM STERN, sworn for the plaintiffs, says:

By Mr. BROWNE:

Q. Where do you say that you saw Mr. Ermann that Sunday night?
A. I stated, on the corner of Gravier and Tchoupitoulas streets, in company with the two Mr. Gumbels.
Q. What two Mr. Gumbels?
A. The two gentlemen sitting over there.
Q. What hour of the night was that?
A. It was between half past eleven and half past twelve.
Q. Sunday night?

A. Sunday night to Monday.
Q. October 28th and 29th?
A. I don't remember the date.
Q. It was the Sunday that some of the seizures were made
457 and on Monday some of them were made?
A. The Monday seizures were made—during that night.
Q. The seizure was made on Monday. I mean this was Sunday night?
A. Yes, sir.
Q. There is no mistake about that?
A. I mean during the night of Sunday to Monday.
Q. The exact hour did you state?
A. Between half past eleven and half past twelve. I was waiting there for my attorney to come back.
Q. Where were they—describe exactly—where were these two Gumbels with Ermann?
—. They were walking from the store of Pattison & Bovard to the corner of Tchoupitoulas street and back.
Q. Whereabouts is Pattison & Bovard's store?
A. It is the third store from the corner.
Q. What corner?
A. The corner of Tchoupitoulas and Gravier streets. Pattison & Bovard's store is the third store from the corner. They measured this distance backward and forward for some time.
Q. Was that on Gravier between Magazine and Tchoupitoulas streets?
A. That is right.
Q. On the south side of Gravier between Magazine and Tchoupitoulas streets, the upper side?
A. On the upper side; yes, sir.
458 Q. How long did they remain there?
A. I seen them between half past eleven and half past twelve, repeatedly. They disappeared at one time, but came back again.
Q. Walking up and down in the same place?
A. Yes, sir; the same place.
Q. Are you personally acquainted with the three parties?
A. I know them by sight.
Q. How long?
A. Some time.
Q. What do you call some time?
A. I know one of the Gumbels by sight for eight or nine years and I know the other Gumbel for four years.
Q. Which one do you mean as knowing for four years?
A. The one in the notion business; the one that sits towards the window.
Q. Do you know his first name?
A. I do not.
Q. The one on the right you say you know for four years?
A. Mr. Cornelius Gumbel I know for four or five years, by sight.
Q. You don't know the other man's name?

A. No, sir; I do not.
Q. But these are the two men that you saw with Mr. Ermann?
A. Yes, sir.
Q. What has been your acquaintance with Ermann?
A. I saw him in town repeatedly. I saw him at Mr. Dreyfus's store.
Q. Which is Mr. Ermann?
459 A. There he is. (Erman stands up.) I saw him at Morgan City also.
Q. Did you have any paper of Dreyfus' that was due when you say you were trying to sell it?
A. Yes, sir; it was not due then, but it is due now.
Q. Was Dreyfus under protest when these seizures were made?
A. I don't know whether I should answer that question or not. I don't know.
Q. Was there any report of Mr. Dreyfus being under protest when these seizures were made?
A. If you want to know what the report was I will tell you.
Q. I ask you if there was any report that Dreyfus was under protest at the time these seizures were made?
A. There was no report that Dreyfus was protested, but there was a report that Mr. Dreyfus was insolvent. I can state the reasons I have for saying so. My knowledge was this, that Dreyfus had pledged or pawned the warehouse receipts of straight whiskey here in New Orleans to the amount of $16,000 or $17,000, which I found out four weeks before I attached him. He had bought these goods, and immediately or very soon after the receipt of the certificates from the bonded warehouse he had pawned or pledged them.
Q. How far were you from these three gentlemen that Sunday night?
A. I was walking up and down from Dreyfus' store to the corner of Gravier street, on Tchoupitoulas street, and they were walking up and down Gravier street, down half the block to the corner.
460 Q. So that you came in directly with them?
A. Yes, sir; directly under the lamp.
Q. And there is no mistake that these three men are the men you saw that Sunday night?
A. These three are the parties that I recognized.
Q. What sort of a night was it?
A. It was a pretty clear night. I could see very plain.
Q. You say you met them under the lamp?
A. Yes, sir.
Q. There is no mistake about that?
A. There is no mistake in my mind about it.

By Mr. MARKS:

Q. Did you not write to your house in regard to the dangerous condition of Dreyfus, and that you were ready to attach?
A. Yes, sir.
Q. What were their instructions in the last letter they wrote to you?

A. My instructions were to watch.

Q. Did they not state to you in these instructions that you had given no cause for attachment, as they could see, but simply to wait and watch?

A. No, sir; they did not state that to me. There is one of the house here at present. He came down purposely to assist me watching.

Q. Have you got the letters from these firms that you represent in this city with regard to that matter?

461 A. I don't know whether I have got them yet, but I think I have some of them.

Q. Have you any objection to produce them?

A. I will produce that part of the letters referring to the Dreyfus matter, but I will not produce them with reference to any other business.

Q. How long have you been employed as the agent of these houses?

A. I have never been employed by them as their agent. I am selling goods for them on commission.

Q. Are you responsible for the sales that you make?

A. I am, to a certain extent.

Q. To what extent?

A. I have to look out as to the standing of the house I sell to.

Q. How long have you been thus employed?

A. I have been with the house about one year now.

Q. But one year?

A. Yes, sir.

Q. What was your occupation prior to that?

A. Prior to that?

Q. Yes. Were you in business in this city?

A. Yes, sir; always in business.

Q. What kind of business?

A. The same kind I am in now, since 1878.

Q. Well, you have not named it. You were in business for yourself, were you not, and representing other firms, but in your own name?

A. Just as I am now.

462 Q. Do you not keep a place of business?

A. Well, formerly I used to receive a certain class of goods from this house on commission. Now I do not. I sell all the goods to be shipped direct.

Q. Did you not have a place of business for which you paid a license as William Stern?

A. Yes, sir; when I was selling goods under commission.

Q. Have you got such a place now?

A. No, sir.

Q. While you were engaged as a merchant under a regular license, was it anything out of the legitimate way of business for parties to take what is known as the certificate from bonded warehouses and placing them in the banks as collateral for the purpose of raising money? Is not that done every day in the week? Is not every

bank doing it every day, both as to receipts for tobacco and receipts for whiskey? Are they not received by the banks as collateral for the loan of money?

A. It is done every day here, but we distillers or agents of distillers hesitate to sell to anybody that deposits these certificates immediately on the receipt of them in the banks of New Orleans. We will advance him money on them ourselves at any time or the houses will.

Q. Then it is merchantable paper?

A. It is negotiable paper.

Q. Is it not a negotiable instrument that can be placed in the bank to raise money upon?

463 A. Yes, sir.

Q. Is there any fraud or wrong in doing such things as that, depositing it in bank?

A. The fraud and the wrong is the bringing up of this case here, because Mr. Dreyfus received these papers, and immediately on the receipt of them he deposited them to raise money.

Q. How long have you been pushing him for money?

A. We did not push him for any money at all. One of our papers was falling due on the Monday following, and we thought he would stand. The only reason we watched him was to be up to all that was going on. We expected that he would move these goods before our paper fell due.

Q. Who employed the police?

A. I did.

Q. Who employed the marshal?

A. I did.

Q. Did you have any writ?

A. I had a writ in the morning.

Q. How long before you employed the police and the marshal had you received the writ? What were your instructions to them? What did you do?

A. At first I employed Farrell's police, about six o'clock in the evening.

Q. What evening?

A. Saturday evening.

Q. You had the police and you stayed with them and watched them, or were you with the police?

464 A. Yes, sir; I was with the police all night.

Q. Who went after the writ?

A. After the writs?

Q. Yes. Who drove up to Carrolton after the writs?

A. Mr. Florance.

Q. Where were you?

A. I was hunting for a bondsman.

Q. You were not there all the time, then?

A. No, sir. I was there until the police came. The police told Mr. Dreyfus that he could not remove any more.

Q. At whose orders?

A. I don't know. The sergeant of police told them not to allow him to remove any more.

Q. Did you not do that?

A. No, sir; I believe Mr. Florance done it.

Q. Who was Mr. Florance?

A. Mr. E. T. Florance, my attorney.

By Mr. BROWNE:

Q. You spoke just now about Dreyfus having pledged the warehouse receipts. You said that was an indication to you that he was insolvent. Where was that pledge made, to whom, and for what amount?

A. I cannot answer you that.

Q. You said for $16,000?

A. Yes, sir; it was given to me in confidence, and I cannot answer it.

465 Mr. Browne states to the court that he proposes to show in contradiction to the testimony of this witness that it is not true, and he asks the question in order to show that it is not true.

A. It was pledged with Mr. M. Frank, of the Metropolitan Bank, for $16,000 four weeks before I attached him—maybe longer—but I found it out four weeks before I attached him. This was given to me in confidence. I did not see the certificates; and the information that I received that the certificates were pledged led me to watch the actions of Dreyfus.

By Mr. LEONARD:

Q. Your knowledge is derived from the statements of Mr. Frank?

A. Not from Mr. Frank; no, sir.

Q. Well, from statements that you heard?

A. Yes, sir; from statements made to me. I heard it was done, and I was alarmed, and I found out I was not mistaken.

By Mr. LABATT:

Q. You are living near Dreyfus' house?

A. Yes, sir; we were intimate with one another.

Q. Do you know of any mortgage on his house?

A. At four o'clock on that Saturday evening there was no mortgage on his property.

Q. Had you examined the records at three o'clock?

A. My attorney examined the records at four o'clock.

Q. Who is your attorney?

A. Mr. E. T. Florance.

466 Q. Did he report to you that there was no mortgage on it?

A. Yes, sir; he reported to me there was no mortgage on it.

The three preceding questions relative to mortgage or no mortgage are objected to as not being the mode prescribed for proving

that question, and the court excludes them and their answers as evidence.

Mr. Labatt offers in evidence a certificate of mortgage granted by Joseph Dreyfus to Joseph A. Dare before W. O. Hart, notary public, October 27, 1883, for $9,000.

Also a similar mortgage in favor of Joseph A. Dare before W. O. Hart, notary public, dated the 27th October, 1883, to secure $6,000.

Also four recordations for State taxes for the years 1880, 1881, 1882, and 1883 and the city taxes for 1880, and showing the assessment on this property to be $10,000.

Also a certificate in favor of S. Gumbel & Co., recorded on the 29th October, 1883, resulting from a seizure made on the 27th October, 1883, for $27,000; that is in favor of Cornelius Gumbel.

Q. What Cornelius Gumbel is that—one of the men that you say you saw that night?

A. Yes, sir.

Q. Is he the Mr. Gumbel that is before this court claiming that he had the first attachment from the State court as against
467 the other creditors?

A. I don't know anything about his claim.

Q. You do not know which Gumbel it is?

A. It is Cornelius Gumbel.

Q. Cornelius Gumbel is one of the men you saw that night; he is the one that has recorded his attachment for $27,000?

A. Yes, sir.

Q. What would that property bring under the hammer—that property on Josephine street?

A. I think from $12,000 to $14,000 it would bring.

Q. Do you know who this Mr. Joseph A. Dare is?

A. No, sir; I heard he was employed in a lawyer's office here.

Q. What law office?

A. I cannot tell you.

Q. Do you know who Mr. Hart, the notary, is?

A. I have heard of him.

Q. Where is his office?

A. With Braughn, Buck and Dinkelspiel.

Q. Who is the attorney of Mr. Cornelius Gumbel?

A. Braughn, Buck & Dinkelspiel.

468 *Hearing and Continuance.*

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, WEDNESDAY, *December* 2, 1885.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG *et als.*
vs.
JOS. DREYFUS *et als.*
} No. 10505.

This cause, as continued from the 30th ultimo, came on this day

to be further heard, and was further argued by the counsel for the parties, respectively, and was continued for further hearing until tomorrow morning at 11 o'clock.

469 *Submission.*

Extract from the Minute Book, November Term, 1885.

NEW ORLEANS, THURSDAY, *December* 3, 1885.

Court met pursuant to adjournment.

Present: Hon. Aleck Boarman, district judge.

JULIUS FREIBURG *et al.*
vs.
JOS. DREYFUS *et als.* } No. 10505.

This cause, as continued from yesterday, came on this day to be further heard, and was further argued by the counsel for the parties, respectively, and submitted; and the court took time to consider.

Decree. Entered and Filed 20 *February*, 1886.

U. S. Circuit Court, E. D. of La. In Equity.

JULIUS FREIBOURG *et als.*
vs.
JOSEPH DREYFUS *et als.* } No. 10505.

470 This cause came on to be heard upon the petition of the complainants for a rehearing and a modification of the former decree rendered herein and was argued by the solicitors for the complainants, and the court being fully advised in the premises—

It is ordered, adjudged, and decreed that the former decree rendered herein be set aside and proceeding — to render such decree as the court deems just and equitable.

It is now ordered, adjudged, and decreed that the sale made by Joseph Dreyfus to Lehman Meyer on the 29th day of October, 1883, of goods and merchandize of the invoice value of $19,893.67 is set aside and annulled—the said sale, though real and accompanied by delivery, being in fraud of creditors—the consideration being the payment of antecedent debt, and Joseph Dreyfus, the vendor, being insolvent at the date of said sale and prior thereto to the knowledge of Lehman Meyer, the vendee.

It is further ordered, adjudged, and decreed that the complainants have judgment against Joseph Dreyfus and Lehman Meyer *in solido* for the sum of eighteen thousand nine hundred and one $\frac{40}{100}$ dollars, with legal interest, as set forth in the judgment at law, with costs, and that the complainants be permitted to move for such further order in the premises against the said Dreyfus and Meyer as they may be advised and as this court can grant.

It is further ordered, adjudged, and decreed that the pledge of

said goods and merchandize made by Lehman Meyer to Abraham Ermann on the 29th October, 1883, to secure the payment of the loan of $15,000 be maintained as valid, the said owner being a
471 pledgee for value, *bona fide*, and without notice of the fraud between Dreyfus and Meyer, and that there be judgment in favor of Abraham Ermann, defendant herein, recognizing and enforcing his pledge upon said goods and merchandize for the sum of $15,000, with 8% interest on $5,000 thereof from the 13th November, 1883, and like interest on $5,000 thereof from the 2nd January, 1884, and like interest on $5,000, the remainder thereof, from the 28th January, 1884, and all costs, and that the same be paid out of said goods and merchandize or the proceeds thereof, if the same be sufficient, in preference to all creditors of Joseph Dreyfus and Lehman Meyer.

It is further ordered, adjudged, and decreed that as the invoice value of said goods and merchandize appears to be larger than the amount loaned thereon by Abraham Ermann to Lehman Meyer, J. W. Gurley is hereby appointed special master to ascertain and report as speedily as possible to the court whether said goods and merchandize have been sold by the pledgee, and, if sold, what the amount is that he has realized thereform, and whether the same has been sold upon the best terms and prices practicable and a reasonable sum realized therefrom, and whether any larger sum should have been realized therefrom by said pledgee than has been obtained by him if the said goods be sold, and, if sold, what sum ought to have been realized from the sale thereof.

And it is further adjudged and decreed that if upon the coming in of said report it should appear that said pledgee has not realized an amount from the sale of said goods and merchandize, though sold to the best advantage, sufficient to pay the aforesaid sum
472 of fifteen thousand dollars, with interest and costs, then, for any and all costs not paid by said proceeds, after first paying the principal and interest of said loan aforesaid, the said Ermann shall be entitled to and have execution therefor against the complainants, Julius Freibourg, J. Walter Freibourg, Maurice J. Freibourg, Jeptha L. Workum, and Ezekiel L. Workum.

Or if there should appear by said special master's report that there should be any surplus of the proceeds of the sale of said goods and merchandize in the pledgee's hands after the payment of the principal and interest and costs due said pledgee, such surplus shall be applied rateably, first, to the payment of the costs in the several suits in equity in this court wherever the validity of said pledge has been assailed, and then rateably to the payment of principal and interest in said several suits and such other suits wherein the solicitors of the plaintiffs and the defendant Ermann have agreed to abide the result of this suit in the same manner as if bills of equity had been filed to set aside said pledge.

It is further ordered, adjudged, and decreed that the injunction issued herein against Abraham Ermann be dissolved with costs.

This done and signed Feb'y 20, A. D. 1886.

(Signed) ALECK BOARMAN, *Judge.*

473 *Motion for Appeal. Entered and Filed* 12 *April*, 1886.

J. WALTER FREIBURG, MAURICE J. FREIburg, Jeptha L. Freiburg, Julius Freiburg, and Ezekiel L. Workum
vs.
JOSEPH DREYFUS *et al.*
} In Equity. No. 10505.

On motion of the above-named complainants in their individual behalf and as members of the commercial firm of Freiburg & Workum, all residents of and citizens of Ohio, by their solicitors, D. C. & L. L. Labatt, and on suggesting to the court that at this term a final judgment has been rendered against them and signed by which they are irreparably aggrieved and injured and in which they are advised there is error to their prejudice and the amount involved and at issue exceeds the sum of $5,000, and that they are desirous of appealing to the Supreme Court of the United States, at Washington, D. C., it is ordered that a devolutive appeal is [be] granted upon pl't'fs giving bond, with surety, in the sum of five hundred dollars, conditioned according to law, said appeal returnable at the next term of the Supreme Court, at Washington, on the 2d Monday of October, 1886.

(Signed) EDWARD C. BILLINGS, *Judge.*

Bond for Appeal. Filed April 26, 1886.

474 UNITED STATES OF AMERICA:

Know all men by these presents that we, Freiburg & Workum, a commercial firm residing in Cincinnati, Ohio, and composed of Julius Freiburg, J. Walter Freiburg, Jeptha L. Workum, Maurice J. Freiburg, and Ezekiel L. Workum, of Cincinnati, Ohio, are held and firmly bound, jointly and severally, unto Joseph Dreyfus *et al.*, of New Orleans; Lehman Meyer, of New Orleans; Abraham Ermann, of Morgan City, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Joseph Dreyfus, Lehman Meyer, Abraham Ermann, heirs, executors, administrators, and assigns; for which payment, well and truly to be paid, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the fifteenth (15th) day of April, in the year of our Lord eighteen hundred and eighty-six.

Whereas the said Freiburg and Workum and the members thereof having heretofore, to wit, on the 12th day of April, 1886, taken an appeal by motion to the Supreme Court of the United States from and to reverse the decree rendered on the — day of ——, 1886, by the circuit court of the United States for the fifth circuit and eastern district of La., holding sessions in and for the said district of Louisiana, in the suit of Freiburg & Workum *et al. vs.* Joseph Dreyfus,

Lehman Meyer, Abraham Ermann *et al.* (in equity), No. 10505 of the docket thereof:

Now, the condition of the above obligation is that if the
475 above-bounden Freiburg & Workum shall prosecute their said appeal to effect and shall answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) FREIBURG & WORKUM, [L. S.]
By J. WALTER FREIBURG. [L. S.]
(Signed) H. ABRAHAM. [L. S.]

Signed, sealed, and delivered in the presence of—
As to surety,
D. C. LABATT.

Bond approved.
(Signed) EDWARD C. BILLINGS, *Judge.*

April 26, 1886.

UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

Personally appeared Henry Abraham, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, Louisiana, and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) HENRY ABRAHAM.

Subscribed and sworn before me this 21st day of April, 1886.

(Signed) E. R. HUNT,
Commissioner U. S. Circuit Court, Eastern District of Louisiana.

476 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 475 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Julius Freiburg *et als. vs.* Joseph Dreyfus *et als.*, No. 10505 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 1 day of October, A. D. 1886.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 1 day of October, A. D. 1886.

EDWARD C. BILLINGS, *Judge.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 228. Julius Freiburg, J. Walter Freiburg, Jeptha L. Workum, Maurice J. Freiburg, and Ezekiel L. Workum, composing the firm of Freiburg & Workum, appellants, *vs.* Joseph Dreyfus, Lehman Meyer, and Abraham Ermann. Filed October 20, 1886.

Office Supreme Court, U.S.
FILED,
DEC 2 1889
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

IN EQUITY.

No. 228.

FREIBURG & WORKUM, PLAINTIFF AND APPELLANT,

versus

A. ERMAN, DEFENDANT AND APPELLEE.

Appeal from the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.
Hon. J. BOARMAN, presiding.

BRIEF AND AUTHORITIES FOR PLAINTIFF AND APPELLANT.

D. C. LABATT.

T. H. Thomason, Printer, New Orleans.

SUPREME COURT OF THE UNITED STATES

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versus

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Appeal from the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana.
Hon. J. BOARMAN, presiding.

BRIEF AND AUTHORITIES FOR PLAINTIFF AND APPELLANT.

SYLLABUS.

1. Where a party in Louisiana asserts a pledge of movable property, not negotiable commercial securities, it is incumbent on him to exhibit a written "act of pledge," public or private, reciting all the "essentials of such a contract, without which he has no valid privilege against third parties." Rev. C. C. Art. 3158; 14 An. 375; 15 An. 165; 32 An. 586, 395; 96 U. S. Rep. 487; 22 An. 107; 6 An. 517; 23 An. 478. Privileges being "*stricti juris*" are based on positive law. 15 An. 165.
2. These "essentials" are: 1st, "mention of the amount of the debt;" 2d, the species and nature of the thing given in pledge, and thirdly, "a statement

annexed thereto of its number, weight and measure," and lastly, this "act" must accompany actual delivery and contain stipulations of the rights and obligations of the parties reciprocally signed. These requisites are *sacramental and not "formalities."* The pledge must not require support by parole, to establish its existence or to supply any essential omission. R. C. C. 3158, 1st and 2d paragraphs, and cases cited above; 18 Duranton "Nantissement," Arts. 518 and 521.

3. "Mere possession of transferred storage receipts, without more, confers no privilege against third parties." 15 An. 165; 6 An. 517.
4. The Act of 1855, reproduced in Art. 3158, did not dispense with any of these essentials. 14 An. 375; 15 An. 165; 32 An. 586, DeBlois vs. Reiss.
5. Fraud, collusion or knowledge of fraud, actual or constructive, "vitiates every thing it touches." Walker Am. Law, 614, 615.

STATEMENT OF THE CASE.

This is a suit in equity, by an ancillary and dependent bill to regulate an action at law and prevent injustice or inequitable advantage under mesne process, supplementary merely to an original suit at law out of which it arose, and is governed by the cases of Hyde vs. Krippendorff, 110 U. S. 277; 3 Wall. 334; 10 Peters, 400; 2 Wall. 633; 99 U. S. 378. As to equitable remedies (see Bill and Amended Bill, R. pp. 1 and 28). "In whatever form, however, the remedy is administered, whether according to a precedure in equity or law, the rights of parties will be preserved and protected against judicial error and the final decree or judgment will be reviewable by appeal or writ of error, according to the nature of the case." 110 U. S. pp. 284-287; 1st Danl. Ch. Pr. 164; 3 Atk. 223; 2 Paige, 280; 3 Paige, 222; 3 Bro. C. C. 70, 72.

The bill charges collusion, conspiracy and fraud

committed against plaintiff by Dreyfus, Meyer and Abraham Erman, and sprang out of facts which have already been ably reviewed and passed upon by this Honorable Court in Gumbel vs. Pitkin, 124 U. S. 145, and received a similar application of the above principle based on the following facts as shown in the Gumbel case.

On Monday, 29th October, 1883, plaintiffs, creditors of Joseph Dreyfus, instituted a suit at law in the United States Circuit Court for about $19,000, and sequestered certain goods under vendor's lien in the store of one Weill, a hardware merchant at 34 Decatur Street, in New Orleans. These goods, with other merchandize valued at about $20,000, had been deposited there under the following circumstances which became notorious on Sunday 28th, and were published in the "Item" of that Sunday evening. R. p. 176.

On Saturday, 27th October, 1883, Dreyfus determined to defraud his numerous creditors, arranged with floats and drays to appear after midnight (Sunday morning) to move a large portion of his stock from 33 Tchoupitoulas to Weill's store, No. 34 Decatur street, aided by his son-in-law, Meyer, who claimed to be a creditor for $26,600, and goods to the amount of $20,000, said to have been sold on the 26th October, 1883, had been partially delivered as a "*dation en paiement*" (Meyer's Ans. R. 18, 24) on the 28th October, 1883, *two days after the sale.*

Further removal, so secret, unusual, suspicious and against municipal ordinances, was interrupted by police officers until writs by vigilant creditors were obtained on Sunday morning, the 28th, and the U. S. Marshal placed in possession of his store on Tchoupitoulas street. On Monday morning, the 29th, soon as Court opened, plaintiffs and others sequestered in Weill's store on Decatur street such goods unpaid for, as

could be identified in original packages to secure vendor's lien and privilege, and issued attachments and garnishee process upon Dreyfus' debtors. No one was present claiming contradictorily, objecting or asserting ownership or possession. *Eight* days after Erman intervenes and asserts a pledge from Meyer for $15,000, evidenced by three notes for $5000 each, at 45, 60 and 70 days, with 8 per cent. interest from their several maturities till paid and possession of transferred receipts of Weill, obtained on Sunday night, executed at his domicil, not his store. In consideration, Erman gave to Meyer $5000 in a check as cash and his (E.'s) two promissory notes to Meyer's order, at 60 and 90 days date for $5000 each, with 8 per cent. running interest *from date.* (R. p. 22).

That his compensation was to be $375, or $2\frac{1}{2}$ per cent. on $15,000, which he did not deduct from the $5000 check, but he trusted Meyer to pay him, *afterwards*, which he says was done. (R. p. 165).

Erman's privilege as pledgee and Meyer's title as pledgor and owner, were assailed by seizure on the day and hour of the pretended loan, yet Erman took no steps (R. p. 18) to protect himself against loss, or to stop the negotiation of his two notes, nor did Erman ever call on Meyer to defend and warrant his title as owner. No insurance against fire was effected by Meyer or Erman. No assertion of ownership or privilege made to the Marshal; no demand of indemnity; no pretence that the goods were not the property of Dreyfus.

No inspection of the goods was made by Erman. No bill of items was produced, and the one now in the Record was *indubitably antedated* with fraudulent intent, because it could not possibly have been made out on Saturday, the 27th October, when Dreifus & Meyer anticipated no interruption of a delivery of $26,600,

so suddenly stopped on the 26th October, at about $19,600, and purporting to be an exact invoice of what had been delivered in the middle of that night and on Sunday morning. Under the practice in Louisiana, plaintiffs (made defendants and respondents by the intervention and third opposition of A. Erman) answered, and alleged substantially that no pledge in writing, private or public, existed; that if so, it was a fraudulent simulation, null and void against creditors, and that Meyer's title and possession were a fraud, intended to screen the property from the pursuit of honest creditors, and his transfer of Weill's receipts conferred no privilege (15 An. 165). The issues were submitted to a jury, and when plaintiffs proposed, under our State practice, to prove the fraud and fraudulent simulation, Erman, by his counsel, objected to any proof of fraud being examined on the law side of the Court, which was sustained by the Court, and only the question of simulation *vel non* of Erman's pledge was submitted to the jury, and after a verdict in plaintiffs' favor vs. Dreyfus, they were instructed to find for intervenor, because the delivery to Meyer was a *real* one and could only be set aside in equity for fraud, and the Court substantially stated that the verdict could not be *res judicata* as to the untried question of fraud. Whereupon, the ancillary and dependent bill in equity was filed as soon as counsel could obtain the necessary authority from absent clients.

These are the salient facts, presenting the questions involved, the manner in which they arose, and sufficiently account for the correctness of the overruled demurrers and pleas of *res judicata*, interposed to delay reaching the merits.

ASSIGNMENT OF ERRORS.

1. The decree is erroneous, in recognizing the ex-

istence of a "pledge," in contravention of the requirements of the Louisiana Code, Art. 3158, and the settled jurisprudence in numerous decisions of the Supreme Court of Louisiana.

2. That the Court erred in considering and permiting parole testimony to establish the contract of pledge, which can only exist "in writing," to affect third parties, and confer a privilege.

3. That the decree is erroneous, in regarding Erman as a *bona fide* pledgee, without full notice and knowledge of notorious facts sufficient to have put him on inquiry, and he should bear the loss, voluntarily incurred, through culpable indifference.

4. It is erroneous, because, at best, Erman could only have been *bona fide* for $4625, advanced in cash, provided he was ignorant of Meyer's suspicious title and precarious possession, which is incredible under the facts proved from his own lips.

5. It is erroneous, because Erman was guilty of "gross and culpable indolence" in not arresting the negotiation of his two notes, for failure of consideration, when informed of the seizure, and if the first note were negotiated afterwards, and paid, it was at his peril, and inexcusable in law.

6. There could be no "innocence" in paying the second note to Meyer's order, which was not negotiated, and preventing the loss of at least $5000; and he is liable, because "courts of equity do not relieve a party from the consequences of risks voluntarily assumed." (Patterson vs. Brown, 32 N. Y. and 5 Tiff. p. 81).

7. The decree is erroneous, because the Court misapprehended the pleadings, the law and the evidence, and adopted a theory as to "notice and knowledge," at variance with settled jurisprudence as to *mala fides*.

8. That it was error to hold that Erman was a *bona*

fide pledgee, in the face of the conclusion that the pledgor's title was null for fraud, and Dreyfus' ownership never legally divested. Rev. C. C. 1977, 3142.

9. Even if the fragments proven as to "a pledge" can be united by parole testimony, so as to supply the "missing act," then Erman is affected with actual or constructive knowledge and notice sufficient to put a prudent man on inquiry, and taint his conduct with *mala fides* for the whole, or at least the $10,000 paid at his peril, after the seizure and issue joined. See 36 An. p. 842, and authorities in brief and his answer to Int. p. 18.

10. There is error in treating the five warehouse receipts as sufficient, because they lack the essentials of "*weight, measure, marks, numbers and quantity*" to identify the articles pledged, and Meyer swears that he had the invoice, with these facts in his possession on Saturday, 27th October, two days before the loan was perfected. (Transcript, pp. 190 and 132, 133, 134).

ARGUMENT.

This litigation presents, as a pivotal point at its threshold, a question the decision of which will obviate the necessity of deciding the issue of fraud and *mala fides*. The bill seeks to set aside, as fraudulent and illegal, a "*dation en paiement*" by Dreyfus to Meyer, and also an asserted pledge of movable property, worth $20,000, set up by A. Erman (sole appellee). It presents two grounds of nullity:

1st. That defendant produces no legal pledge in writing, as exacted by the law of Louisiana, but avows a pledge resting on parole to support a privilege against third parties, in violation of the Civil Code, Art. 3158.

2d. That there was no lawful, open delivery to Meyer; but, on the contrary, a clandestine removal at

midnight, intended to screen Dreyfus' property from the pursuit of his creditors, or illegally to give an unjust preference, and Erman had full notice and constructive knowledge, sufficient to put him on inquiry, and consequently acted *mala fide* in making his pretended loan.

On the 1st point: Previous to the Act of 1852 and 1855 the Civil Code, Art. 3125, required "pledges made under private signature to be by *written act*," and to be duly registered in the office of a notary public, at a time not suspicious," and mentioned certain essentials, amongst them: 1st, The amount of the pledgor's debt to the pledgee; and, 2d, The nature of the thing given in pledge, or a statement of number, weight and measure annexed to the pledge." Now, in 1852 and 1855, an amendment of the Legislature, since codified as Art. 3158, R. C. C., simply eliminated to facilitate commerce, the necessity for registry. *Nothing more, nothing less.* It did not alter the essentials. It left the old law as it was before, with that formality excepted, and made it absolutely essential, in all cases, to produce a "written act of pledge, containing reciprocal obligations and rights of both parties, duly signed," except as to stocks, bonds, promissory notes, bills of exchange and negotiable securities, etc.

Your Honors will not fail to observe that, neither in the answer of Erman to complainant's bill, pp. 16 and 17, or in his intervention, p. 70, does he pretend to have "an act of pledge." It asserts that said Meyer did, by a clause in each of said notes and the endorsement of certain warehouse receipts, five in number, and delivery of same to your petitioner, pledge the said twenty-nine barrels of whiskey, with a quantity of other goods; and your intervenor and third opponent alleges and shows that said advances, together with the notes evidencing the same, and the pledge of

said warehouse receipts to secure the same were made in good faith, and prior to the seizure herein, which is precisely the case presented by Renshaw in 15 An., p. 65, whose asserted pledge was denied. Now, the clause in the notes, printed as a memorandum only applicable to negotiable securities and their transfer, and not to other movable property, says that "this note is secured by pledge," etc., but does not, in itself, constitute the required *act of pledge*, to be executed, *pari pasu*, with the loan to affect third persons.

Hence, when the first case under the new law came before the Supreme Court of Louisiana (the writer was of counsel) it was decided and never overruled, that "In the contract of pledge, the mention of the amount of the debt intended to be secured, required by Art. 3125, C. C., is in no sense a 'formality.' It is essential to the contract, and as such not abolished by Sec. 2 of the Act of 1855, relative to pledge." *Cater vs. Merrill, 14 An. R. p. 375.* That was a pledge of movables, perfectly analogous and full of instruction on the point as to the amount of the debt. The Act of 1855, p. 348, says: "All pledges of movable property may be made by private writing, accompanied by actual delivery, and the delivery of property in a warehouse shall pass by private assignment of the warehouse receipt, so as to authorize the owner to pledge such property; and such pledge so made, without further formalities shall be valid, as well against third persons as against the pledgors thereof, *if made in good faith.*" The Supreme Court says: "By comparing this law with the 3125th Article of the Code, it is obvious that the clause, 'without further formalities,' means the registry of private acts of pledge in the office of a notary public, required by the Code. But the mention of the amount of the debt intended to be secured, like that of the specific

property pledged for the security of the debt, is in no sense *a 'formality.'* It is essential to the contract of pledge; so essential, that without such mention the contract would be unintelligible. For what is a pledge? It is an auxiliary contract for the enforcement of any lawful obligation" (Arts. O. C. C. 3100-3103). "It results from this definition that there should be no uncertainty or ambiguity as to the nature and extent of the principal obligation which it is the object of the pledge to aid and enforce," p. 376. The clear meaning of this language is to exclude all parol testimony to establish the required written act of pledge as an auxiliary contract. The debt or the nature of the identical property pledged and delivered in good faith all of which have been disregarded and dispensed with in the decision of the court below, and which is assigned as error." This is emphasized by the Supreme Court, when they say: "Otherwise it is impossible to ascertain the nature and extent of the rights and obligations of the pledgor and pledgee *reciprocally from the instrument itself.* Recourse would necessarily be had to parol proof to explain the intention of the parties, and thus the object of the law which *requires this contract to be produced in writing,* would be defeated and the door opened to the perpetration of frauds upon the parties contracting and upon their creditors." Now, complainants assert that there is not, and they challenge the existence of any proof to the contrary, that this Record discloses a scrap of any private or public act of pledge as required by the jurisprudence of Louisiana, mentioning the reciprocal obligations of pledgor and pledgee, or containing the essentials of a valid pledge, with all due deference to the learned Judge of the Court *a qua.* Their only evidence is three promissory notes of $5000 each, at the bottom of which is a

printed unsigned memorandum, that each note of $5000 is "secured by a pledge, etc.;" but this usual memorandum utterly fails to supply the required written act of pledge, mentioning the amount of the principal debt of $15,000, reciprocal obligations of pledgor and pledgee, and the nature, character, weight, number and measure of the articles pledged and delivered to the pledgee, in open daylight, in good faith, and as honest merchants. Judge Cole, concurring at p. 378, says: "The object of the law in requiring the pledge by private writing, is that the whole contract should be manifested." Now in the case at bar, the pretended pledgee attempts to prove by parole that he advanced $5000 cash to the pledgor and his two promissory notes for $5000 each to establish the debt, required to be mentioned in the act, specifically in writing. "If this were not the object, says Judge Cole, then there would have been no necessity of declaring that the contract of pledge should be in writing; besides, if it be not necessary to mention the debt which was to be secured by the pledge, then by parity of reasoning, there would be no use to insert in the private act the nature and amount of the property pledged." So, we ask, where in this Record, is there any private act of pledge, mentioning the debt to be secured or containing the description, nature, weight and measure of the goods to make a valid pledge in Louisiana?

"The word pledge is used in the Statutes, of 1852 and 1855, in the sense of the definition of Art. 3100 of the Civil Code, which defines the contract of pledge, and as the second Section of these acts require the contract to be in writing, the private act between the parties must contain what is declared to be essential by this Article, to constitute a pledge, that is, a declaration of the thing given in pledge, and of the particu-

lar debt for which the thing is pledged. In the present case, there is no particular debt specified in the act of pledge. It merely says, 'for value received, I hereby pledge,' etc. The words 'value received' do not explain the particular debt for which the gunny bags were pledged, and therefore, this act of pledge does not create a pawn within the definition of Art. 3100, O. C. C." This case was much stronger than the one at bar, because the pledgee, Eager, did attempt to show a private written act of pledge; but Erman does not exhibit a scrap of writing which purports to be "an act of pledge."

In the 32 An. R. p. 587, DeBlois vs. Reiss, this subject was re-examined by the new Court of Louisiana, Poché, Justice. It says: "The contract of pledge of movable property, other than promissory notes, bills of exchange, stocks or claims, in order to affect third persons, must be by written act and the amount of the debt and the nature of the thing pledged, as required by Art. 3158, C. C., must be mentioned in the act." See 31st An. 865; 15 An. 465; 14 An. 375. The facts of this case are analogous to the case at bar. That decision says, p. 588: "It (the pledge) is assailed by intervenor and by plaintiff on the ground that the pretended pledge was not made in writing, as required by Art. 3158 of our Civil Code, and that as a pledge it is null and of no effect as to third parties. As evidence of his pledge, Reiss relies upon the four promissory notes subscribed by Testart, at the bottom of which appear abbreviated dispositions of certain articles of jewelry and the weight and size of same. He introduced verbal testimony to translate, explain or amplify these observations, and upon that testimony he expects this Court to decide that he has shown a contract in writing as contemplated by the Code, from which we copy the following language:

'But this privilege shall take place against third persons, only in case the pawn is proved by an act made either in public form or under private signature, and provided, also, that whatever may be the form of the act, it mentions the amount of the debt, the thing given in pledge, or as a statement annexed thereto of its number, weight and measure. All pledges of movable property may be made by private writing, accompanied by actual delivery, and such pledge so made, without further formalities, shall be valid as well against third persons as against the pledgors thereof, if made in good faith.' The mere statement of the proposition shows that it is pregnant with self-destruction.

"Parole testimony could be introduced, and was properly admitted, to explain the meaning of certain letrers or ciphers in a written instrument, but the District Judge erred in allowing parole evidence to show a *pledge resulting from simple notes of hand*, because, forsooth, a few unintelligible letters or symbols were appended thereto. The practical result of such a course was to allow parol testimony in proof of a pledge of movable effects, which is required by law to be evidenced by a written contract only."

So, in the case at bar, the three promissory notes of Meyer have a printed memorandum on each that "this note is secured by pledge," which simply indicates that it was *intended* to be secured by a written act, which is not produced or accounted for, leaving the pretended pledgee precisely in the attitude of Reiss, in 32 An. 588, where the Court says: "Defendant does not even pretend to hold anything in the shape of a written contract, but relies exclusively upon his four promissory notes and his attempted verbal explanation, evidently losing sight of our jurisprudence, which has long ere this settled that privileges are of strict right and par-

ties claiming under them must conform to the requirements of the law. It is required, in order to create a pledge, that the intention of the parties be reduced to writing; that the nature and amount of the debt to be secured be stated; that the object or objects or things pledged be described so as easily to be identified; that (actual) delivery should accompany the act, when under private signature, and the instrument should exhibit the nature and extent of the *rights and obligations of the contracting parties reciprocally.*" "Otherwise recourse would necessarily be had to parol proof to explain the intention of the parties and thus the object of the law, which requires the contract to be reduced to writing, would be defeated." 14 An. 375, Cater vs. Merrill, and 15 An. 165. "The assignment of a warehouse receipt, in the absence of a stipulation that the property is given in pledge to secure the payment of a principal obligation, *the amount of which is specified*, does not confer a privilege upon the transferee;" see 14 An. 375. Tested by this case, Erman is in the identical position of Renshaw in 15 An. 165, and has no valid pledge or privilege. In the language of the Supreme Court in 14 An. 375: "We, therefore, conclude that defendant has utterly failed to show a pledge which can be enforced in law;" and that Erman has produced no written act of pledge, and only relies on three promissory notes, of $5000 each, having a memorandum at the bottom intended to apply to pledges of negotiable instruments, stocks and bonds, and not to movable property; that it is unsigned by both parties and only *refers to a written act never executed;* contains no reference to any principal obligation of $15,000, and lacks all the essential ingredients to establish an act of pledge, and, therefore the judgment should be reversed and rendered in plaintiff's favor. In other words, we reiterate that under Louisi-

ana law a valid pledge of movables must exist by a separate and independent act or contract in writing from the evidence of indebtedness, intended to be secured, and it must contain certain esssentials, viz., amount of the debt, description of movables pledged or statement annexed thereto of its number, weight and measure, accompanied by actual delivery, and besides the written act must not depend on oral testimony, but contain the rights and obligations of both parties, reciprocally expressed and duly signed by the contracting pledgor and pledgee. The essentials are in no manner affected or repealed by any legislative enactments, and have been consecrated by an undeviating series of decisions, dating from the creation of our Supreme Court to the present hour, and are intended to prevent fraud and simulation, by delinquent debtors in efforts to screen their property from the pursuit of creditors, and to exclude all parole testimony to supply the absent written act. It is obvious, that the act of pledge should be distinct or separate, and not embodied in the evidence of indebtedness, because the note may be negotiated or collected without surrendering the act of pledge until the pledgee receives a receipt and transfers back to the pledgor his released property. Therefore, the written act of pledge being non-existent and unproven, relieves your Honors from the necessity of passing upon any other error in the decree below. To say: "This note is secured by pledge," is no more the pledge than a note, saying "this note is secured by mortgage," would be a mortgage without "an act before a notary public," with which it is identified "*ne varietur*," under similar jurisprudence in Louisiana.

Upon the second point the pretended pledge is equally void and defective, because the circumstances under which Meyer obtained delivery or possession

were so precarious, irregular, unusual and clandestine that his apparent possession was illegal and fraudulent, within the meaning of the civil law of Louisiana, and it is indisputable that he could transfer no better title to his pledgee than he possessed. *Non dat, qui non habet.* "*Nemo plus juris in alius transferre potest et quam ipse habet,*" governs, and 6 Cranch, 133, only modifies the principle, when purchasers buy without notice of defective or defeasible title and not otherwise.

Art. 3133, R. C. C.: "The pledge is a contract by which one debtor gives something to his creditor as a security for his debt." It is therefore an auxiliary act or obligation in writing to secure the principal obligation as surety." 14 An. 376, and DeBlois vs. Reiss, 32 An. 886 Art. 3136.

Art. 3142: "A debtor may give in pledge whatever belongs to him; but with regard to those things in which he has *an ownership which may be divested*, or which is subject to incumbrance, he cannot confer on the creditor, by the pledge, any further right than he had himself;" and 3143: "To know whether the thing given in pledge belonged to the debtor, reference must be had to the time when the pawn was made." 2 La. R. 516 and 518, Gasquet vs. Johnson, and 2 Mason, 239. "A fraudulent purchaser can confer no right upon his creditors to atttach or enforce a pledge on property, possession of which is founded in fraud." Art. 1968, Art. 1969, R. C. C. "From the principle established by the last preceding Article, it results that every act done by a debtor with the intent of depriving his creditor of the eventual right is illegal, and ought, as respects such creditor, to be avoided." Art. 1984, R. C. C.: "Every contract shall be deemed to have been made in fraud of creditors when the obligee knew that the obligor was in insolvent circumstances, and when such

contract gives to the obligee, if he be a creditor, any advantage over other creditors of the obligor," so that when the Court adjudged fraud in the *dation en paiement* it was annulled *ab initio*, and left Erman without any right through Meyer, his pledgee.

We also cite 33 An., p. 319, and 96 U. S., p. 482, from Casaregis and Troplong, and 20 Wend. 515.

"The requirement of possession is an inexorable rule of law in such cases, which cannot be relaxed, and which was wisely provided as an effectual preventive of fraud and deception." In 33 An. 1047, the Court says, "This possession must be complete, continuous, certain and uninterrupted;" assuredly not an unusual and clandestine possession, obtained at midnight, of a *dies non*, which was promptly disputed on the opening of Court next day by complainants and a cloud of creditors, under various writs of attachment and sequestration by the marshal and sheriff against the insolvent debtor, Dreyfus, the father-in-law of Meyer, and in whose house Meyer lived as part of the family.

At most, the memorandum printed at the bottom of the notes only indicates an intention to make a pledge or a reference to one already made; but your Honors have said, in Casey vs. Cavaroc, 91 U. S. 487: "An agreement for a pledge raises no privilege." Meyer never transferred his title to the property, and the only question is whether the "attempt to pledge" raises a privilege? 96 U. S., 487, Casey vs. Cavaroc. If it does, then it is the "attempt, and not the deed, which confounds," a doctrine adverse to the enlightened jurisprudence of this Honorable Court in the authority cited.

The printed words on which Erman relies to be equivalent to "the written act" of pledge required by our law are as follows, on the three notes for $5000 each: "*This note is secured by pledge of the securities*

mentioned on reverse hereof, and in case of non-payment the holder is entitled to sell the said securities at public auction or private sale, without recourse to legal proceedings, and to make any transfers that may be required, applying proceeds of sale towards payment of this note."

The important and pivotal point that this was no pledge was distinctly urged in brief, and argued before Judges Billings and Boarman, but was not noticed or passed upon by either. It is obvious this form of promissory note is that commonly in use by brokers, stock dealers and banks, upon pledges of negotiable securities, stocks and bonds, requiring *no written act of pledge*, and that Meyer and Erman are "hoisted by their own petard" for neglecting to take legal advice "how to do it" according to law, with all due respect and proper deference. It is also indisputable that the pledge of movable property under the Act of 1855, now Civil Code, Art. 3158, of 1870, is not contemplated in the word "*securities* or transfer;" but a description of the nature, weight and measure is to be distinctly mentioned in the pledge as an essential requisite to its validity.

We submit that your Honors will rise from the perusal of this Record satisfied that the enlightened court below was inadvertently misled into the recognition of a pledge not evidenced by a single scrap of writing; that there is no mention of the amount of debt incurred and secured by the pledge, and no private act in writing containing reciprocal stipulations as to rights and obligations of both parties, executed, signed, and accompanying the actual, peaceable, open, continuous and unequivocal delivery and possession of the pledged articles specifically described in the written act, as the law exacts. 15 An. 165. Observe, your Honors, that the signature of A. Erman is only found as drawer of the two notes for $5000 each (not $4000, as stated by the

Court), and that of Meyer as endorser, to collect or negotiate, but the character of pledgor and pledgee, nowhere is found in writing, private or public, in the record as auxiliary to the principal contract of loan.

The "act" essential to support the privilege is invisible, and not proven as the law inexorably exacts. The defense perishes under the maxim: *"De non apparentibus et de non existentibus, eadem est lex."*

If any pledge were intended, it was never reduced to writing, and is only feebly shown by illegal parole testimony reprobated by Louisiana and federal jurisprudence. See cases cited and Cavaroc vs. Casey, 96 U. S. 474. No act in writing is produced fixing the debt at $15,000, or the terms of the loan and its repayment, unless the printed memorandums on the three notes are equivalent to that requisite.

It was urged upon the Court *a qua*, that even if it found that a pledge was proven, it only existed for the $5000 said to have been paid cash before notice, but that the subsequent payment of the two notes, in the face of actual and constructive notice and knowledge of the fraud and simulation, defect of title and non-existence of a pledge in writing, destroyed all equity in pledgee's favor *pro tanto* and were paid at his peril, especially the last note of $5000, held and collected, as the Record shows (p. 132), by Meyer, *without pretense of negotiation.* See 32 N. Y. and 5th Tiff. 81. But the learned Judge below, contrary to all the authorities, and unsupported by a single case to the contrary, adopted a theory of notice and knowledge entirely at variance with the best text writers and the decisions of the highest Courts in the United States and England. His reasons for judgment in the Weiller case were the same in this and other cases tried together, to save costs, and are fully reported in Federal Rep., 26 Vol., April 20th, 1886, p. 825.

The learned Judge's statement of the facts and his appreciation of the pleadings and proof, exhibit great injustice to the merits of the controversy, with all due deference and respect.

The Court says: "Dreyfus, on October 27th, 1883, gave in payment to Meyer $20,000 worth of goods, making him a complete delivery of the same." The Record says the goods, $26,000, were sold to Meyer on Friday, the *26th October, 1883*, (see answers of Meyer, pp. 19 and 20), and only $20,000 delivered after midnight, on *Sunday, 28th October, 1883*, and further delivery was interrupted by police officers, and finally by the Marshal of the U. S., under certain Sunday writs, and by the sheriff, which led to the case of Gumbel, intervenor, vs. Pitkin, reported in 124 U. S., R. p. 145. On Monday morning, the 29th October, 1883, complainant and others were seizing and identifying these goods in Weill's store, (eight blocks off) where Dreyfus and Meyer had deposited them pell-mell in the darkness of Sunday morning. Weill swears he only signed the receipts for the goods, *at his house on Sunday evening, the 28th October*, (R. p. 212), and it was only on Monday, 29th October, 1883, that Erman agreed to make the pretended loan on those goods without ever seeing them or any invoice of items. (R. p. 153). The loan was concocted, while the law officers were seizing the identical merchandise, under writs of Weiller, Dubois, Frieburg & Workum, Osborne & Co., and Jacoby & Co., as creditors of Joseph Dreyfus. Subsequently, about eight days afterwards, Erman intervenes in these suits and asserts a pledge and privilege, to which the plaintiffs answered, charging fraud and simulation, and the non-existence of a valid pledge. On the trial of this issue in the Weiller case, the Judge presiding (the Hon. E. C. Billings) ruled that fraud was not examin-

able upon the law side of the Court, and as a *real* delivery had been made to Meyer, the only question for the jury was simulation, *vel non*, and that while the transfer to Meyer might be fraudulent and voidable in equity, there could not be simulation in law, and the jury were powerless to resist the charge, to which plaintiffs objected, on the ground that it might conclude them on the equity side; but the Court said the verdict should and would not produce the effect of *res judicata*, whereupon the complainant's dependent bill was filed and the equity suit, now on appeal, was begun. These facts are substantially stated in the bill and by Judge Boarman, p. 826.

The doctrine that a delivery when *real*, but fraudulent, requires the revocatory action to annul fraudulent sales and givings in payment, at civil law is identical with the rule in chancery, and applies to the transfer from Dreyfus to Meyer. But no such principle is applicable to Erman's "contract of pledge." A pledge is either good or bad, and depends for its validity on the title of pledgor, when otherwise legally made; so that Judge Boarman errs in saying, p. 826: "The Court ruled that the issue as to whether *the pledge* was a real one, though fraudulent, could not be heard;" and on 827: "The only issue which could be heard in those suits was that Erman's contract was a real one and not a simulation." No point of this kind was made. The objection of Erman was that no evidence could be heard on his intervention as to the fraud of Meyer's ownership and title, because a *real* delivery had been made which was only assailable in equity as required by the civil law in a revocatory action and was not examinable in a court of law in the Federal courts. There was no such controversy as stated by the Court, and could not be as to the contract of pledge, because the point could only arise upon a fraudulent sale or

"dation en paiement" and is inapplicable to a pledge *vel non*. It misapplies the meaning of the law as to a *"real"* delivery and breeds confusion of legal principles to graft such an idea on contracts which do not confer ownership, but only a privilege as pawnee.

The Court found that "Fraud was proven between Dreyfus and Meyer and entered a decree for complainants." This certainly established that Dreyfus remained the owner of the pledged goods and destroyed the title of Erman's pledgor, Meyer, who could transfer no better title or greater rights than he possessed. As Erman held no act of pledge in writing from Dreyfus, it is inconceivable how the pretensions of Erman, who claims through Meyer, can be asserted or recognized upon another man's property. Erman was bound to stand or fall on the validity of Meyer's title and the payment of his asserted loan, depended on the ownership of the goods by the pledgor. If he were not the owner he could not make a valid pledge, although he might owe Erman the debt. It would not be the first time that a creditor took from his debtor a pledge or security of valuables he could not hold against third parties through lack of prudence in failing to make inquiry. Pretermitting this estion, let us now examine the doctrine of notice upon which the decree as to Erman was rendered and of which plaintiffs complain. The views of the Judge are novel and unsupported by the citation of a single authority. They seem at variance with every text writer and every judicial opinion within our limited powers of investigation (3 How. 333, and authorities in the brief). His Honor adopts the theory that the only notice which reached Erman was that his right of pledge and privilege was vicious for simulation, but not for fraud of the pledgor or knowledge on his part. He confounds the rule of *lis pendens* with knowledge

of the fraud, or the defect of title, or the equities of third parties, and insists that it is only from the time a suit charging fraud, duly served, that Erman's rights could be affected. In this the Court erred, and if not, then the suit was brought and pending when the property was seized as Dreyfus', and notified him that the contestation as to title was begun on the 29th October, 1883, out of which the ancillary and dependent bill became, on Erman's motion, absolutely necessary to be determined in equity. The Court overlooked the pivotal fact that it was upon Erman's objection in the suit at law that plaintiff was remitted to the equity side of the Court to try the question of fraud, and, therefore, Erman had full notice and complete knowledge of the allegation of fraud, acted upon it to prevent its determination by the Court and jury, and should not be permitted to urge that he had no notice of the charge of fraud, except after the bill was filed in equity or before he paid his two notes.

We all know that the object of the revocatory action, the "*actio Pauliana*" of the Roman law, is to set aside contracts having a "*real*" existence, but which the law strikes with nullity, unless barred by prescription. The action is quite distinct from that to have a simulated sale decreed such. Where an actual title has passed, *accompanied with possession*, no relative nullities, not even those resulting from fraud, can be inquired into collaterally. 2d Hennen's Dig. 1031, § 1; 1033, § 2; 33 An. 1029; C. C. 1963-4; 2 L. 543; 6 L. 83; 11 L. 424, 530; 16 L. 363; 11 R. 190; 6 An. 87, 552; 10 An. 18. Until recently it was held that this action applied only to immovable property. 33 An. 864.

What say the authorities? "A party put by the circumstances on inquiry as to a fact, is affected with constructive notice thereof." 3 How. 333. "One who has paid nothing prior to notice would not be pro-

tected in his purchase, and if a partial payment is made, the protection will only extend to the amount actually paid prior to notice, and as to that paid subsequently he will be treated as a purchaser *mala fide*." Wade on the Law of Notice, § 93; 34 Michigan R. 360. "Where a party having knowledge of such facts as would lead any honest man using ordinary caution to make further inquiries, does not make, but on the contrary, studiously avoids making such obvious inquiries, he must be taken to have notice of these facts, which if he had used such ordinary diligence, he would readily have ascertained." Baron Alderson in Whitbread vs. Johnson; 1 You. and Call. Exchequer R. 303; 3 How. 410; 10 Watts Penn. 67, and Wade on Notice, §§ 8, 10, 11; 25th Penn. St. 354, and 3d Md. Ch. Dec. 488.

In 14 An. 375, the Supreme Court of Louisiana comments on "the precautions usual among men in trade dealing with those whose probity they do not suspect, to ascertain the existence of the merchandise respecting which they are dealing, in proof of good faith," to all of which Erman was indifferent.

"In order to affect purchasers it is not always necessary that the notice should be actually received before the execution and delivery of the deed. It will be sufficient if given before the payment of the purchase money and citing." 11 Bush (Ky). 367. "When there has been a partial payment before notice received, the purchaser will be affected *pro tanto*." Wade § 60. In 34 Michigan, 360, replevy (sequestration) is sufficient notice to prevent further payments. "It has always been held that no one could be protected as a *bona fide* purchaser except to the extent of his payment made before he received such notice as should have prevented him from making further payments." In 3 Howard, 333, the rule is, "that if under such circumstances a man chose to re-

main in indolent ignorance or indifference to the title, it was a voluntary ignorance and indifference which ought not to be permitted to avail him against the rights of the *cestuis que trust.*" See also 6 Wall. 91, Wilson vs. Hall: "When a person has not actual notice, he ought not to be treated as if he had notice, unless the circumstances are such as to enable the Court to say, not only that *he might have acquired,* but also that *he ought to have acquired it* but for his gross negligence in the conduct of the business in question. The question, then, when it is sought to affect a purchaser (and a pledgee is a quasi purchaser) with constructive notice, is not whether he had the means of obtaining, and might, by prudent caution, have obtained the knowledge in question, but whether not obtaining it *was an act of gross or culpable negligence.*" See Sugden on Vendors, p. 622, and Lord Ch. Cranwoth in Ware vs. Lord, 3 Howard, 333; 7 Pet. 271. The evidence in this (Record, p. 149) shows that the store where Meyer and Erman swear they perfected the loan and pledge on Monday, the 29th October, 1883, was not two minutes' walk (Canal to Decatur Street), and if Erman had gone there to examine the whiskey and merchandise before making such a large investment upon incredible terms and assumed ignorance, he would have found the marshal and sheriff making seizures of the identical property sought to be pledged. Besides all this, Erman was the guest and inmate of Dreyfus and Meyer at their home on Sunday night, the 28th October, 1883, talking with Meyer, and slept there. He was in the city on Monday, the 29th, the day of the seizures. The newspapers gave full details of the midnight removal to Weill's store; the community was discussing the particulars as town talk, and the *Item* of Sunday evening, the 28th, had published full particulars.

All this is in the Record, p. 117. How can he plead ignorance, innocence, or want of notice, unless claimed through "gross and culpable negligence" to his undoing? How can this village ice-vendor shelter himself from the charge of "gross and culpable negligence and ignorant indolence" when he pretends to have loaned $5000 and issued his two notes for $10,000 more, *with 8 per cent. interest* from *date* (not maturities), and was only to receive 8 per cent. from maturity on the loan, and a commission of 2½ per cent., say $375, without investigation or inquiry as to Meyers' title as principal, agent or factor; without seeing the merchandise, or having it protected against fire, or viewing any invoice or bill of items? How can he be deemed an innocent party, without knowledge and notice of complainant's equities, when it was upon his motion on the law side of the Court that complainants were driven to assert their equitable title by this ancillary bill?

It is incredible that Erman, an ice dealer in Morgan City, a village 100 miles away, to whom Meyer wrote urging him to come to New Orleans, where he arrived in the "nick of time," and slept in Dreyfus' house on Sunday night, 28th October, 1883, [redacted] did not know, before 9 o'clock on Monday morning, of the collapse of his host's commercial honor, so fully detailed in the Sunday and Monday newspapers, and his son-in-law's connection with the removal. Can it be possible he was ignorant of the failure and the suspicious character of Meyer's possession and title to the goods proposed to be pledged? Does it not challenge credulity to believe that a merchant would risk $15,000 to make $209 on goods invoiced by an unreceipted bill, without considering him the most *naive* "neophyte" who ever worshipped at the shrine of pecuniary ventures or trusts?

Your Honors cannot fail to appreciate the circumstances surrounding the transaction, calculated to awaken suspicion and invite scrutiny and inquiry, the absence of which the law makes the equivalent of actual or constructive *knowledge* to establish bad faith.

Ample proof depicts Meyer as frenzied for money, hurried for time, seeking Weill's receipts, and having them signed on Sunday night at his domicile—*not his store*—to use them on Monday to raise $15,000. His excuses for the nocturnal removal are disingenuous. They actually confess the fraud, because Weill was not one of those merchants who opened store on Sunday. On the contrary, it is presumable that Weill kept both days, and only opened on Mondays. To the credit of those who did business on Sunday, it is not shown that they ever opened at such an unusual hour as 2 or 3 o'clock A. M., when customers were "fast asleep." As to the "storage" with Weill, to raise money more easily, instead of taking them to his own ample and empty store, much nearer to Dreyfus and *en route* to Weill's, it is an afterthought, as he could have pledged and delivered the goods as well in one place as the other, if his title were open and unquestionable. It would have saved storage expenses, and avoided the appearance of opening another man's store, like a "suspect in the night." It was in a corner, without witnesses, he assigns these receipts to Erman of $20,000 merchantable goods at New York and Ohio cost prices, unpaid for by his vendor, and receives only $5000 cash, less $375; *i. e.*, $4625, and two unsecured notes at 60 and 90 days, for $5000 each. Erman is no capitalist or dealer in such goods or quantities. He might die or become insolvent after disposing of the goods pledged. No stipulation to insure against fire; no written act of pledge deemed necessary, containing reciprocal rights and obligations by borrower or lender.

It cannot be successfully contended that the transaction by Erman is a pledge of securities requiring no act in writing, for the reason that it is an attempt to pledge movable property, by transfer of the warehouse receipts alone, and confounds that species of property with negotiable securities requiring no written pledge and thus to repeal or evade the meaning of the Code, when it exacts a written act of pledge of such property to be effectual against third parties and give a privilege. The warehouse receipts are not negotiable instruments like stocks, bonds, and other securities, and the delivery of the goods was conditioned on the return of the receipt duly endorsed or on written order of L. Meyer. Neither pledgor or pledgee is relieved from the essentials of stating "number, weight and measure, species and nature annexed thereto." C. C. 3158. It is not pretended that a warehouse receipt is embraced by the words, "obligation or claim upon other persons," within the spirit and purpose of the 2d paragraph of Art. 3158, because its assignment is mentioned as a mode of symbolic delivery only specially provided in the 2d paragraph, which, to be effectual, as we have shown, does require the "written act of pledge, in addition to such transfer." 15 An. 165.

Erman must have suspected or known that the transaction indicated a defective title, and the danger of seizures from the clamoring creditors of Dreyfus, already in Court by the Sunday writs, of the Tchoupitoulas Street store, were sufficient to put him on inquiry, but to all of which he was indifferent and grossly negligent. He should have asked himself, Would it not have been more natural for Meyer to have pledged only $7000 for the $4625 cash, and then sought another capitalist for $10,000 on the $13,000 left of the $20,000 of saleable staple goods at cost prices?

Again, if Meyer's possession were honest, lawful and

open, without collusion or fraud, what was to prevent him from selling the balance in open market or at auction, and realizing the desired amount more promptly and with better result than from the difficult negotiation of Erman's unsecured promissory notes? Any auction store would have gladly advanced $10,000 to obtain a sale like this of $13,000 staple goods at cost prices. All these questions presented themselves, and Erman should have asked for some explanation of such an eccentric transaction as Meyer was willing to accept.

The rules respecting a purchaser without notice are framed for the protection of him who purchases a legal estate, and pays the purchase money, without knowledge of an outstanding equity. "*They do not protect a person who acquires no semblance of title.*" They apply fully only to the purchaser of the legal estate. Even the purchaser of an equity is bound to take notice of any prior equity." "There is, we think (7 Peters, 271, Vather vs. Hinde) much reason to believe that he had actual notice of that equity; or, at any rate, was informed of circumstances which ought to have led to such inquiry as would have obtained full notice. Erman was in the camp of the conspirators, their friend and guest, before he made the loan, and had every source of knowledge open to warn him against it.

When the "*dation en paiement*" is annulled and avoided as in fraud of creditors by the revocatory action, or bill of equity, it necessarily follows that the absolute title to the property never passed to the favored creditor from the delinquent debtor, and consequently no mortgage or pledge by him can defeat the rights of complainants to subject the property to their seizure, unless the pledgee or purchaser could not have ascertained, by inquiry, of the outstanding defects or equities. The legal title of Meyer must

yield to the equitable title, and according to Art. 3166, R. C. C., "until the debtor be divested from his property, he remains the proprietor of the pledge, which is in the hands of the creditor only as a deposit to secure his privilege on it." Under the decision in 15 An. p. 165, Erman is precisely in the attitude of Renshaw, who held similar warehouse receipts and was denied a privilege, because he had no "act of pledge in writing;" that the failure to produce an "act" was not a *formality*, but an "*essential*," under 14 An. 375, Cater vs. Merril, a leading case upon the Act of 1855, and affirmed in 32 An. R. p. 586. We now call your Honors' attention to an analogous case from the Supreme Court of Alabama, which is diametrically opposite to that of the Court *a qua*. (Southern R. p. 776, May, 1887).

Cleveland Mills vs. Sibert, February, 1887: "There does not seem to be any serious controversy in respect to the fraud of Hawkins in obtaining the goods from plaintiff. The main contention is whether the defendants are *bona fide* purchasers without notice of fraud. On this issue the Court, at the instance of defendants, instructed the jury that, under the facts of the case, it made no difference whether or not Hawkins acquired the goods by fraud, if they believed from the evidence that after his purchase, he sold them to defendants before plaintiff took any steps to disaffirm the sale, and that defendants had no knowledge of the fraud of Hawkins in the purchase of the goods. The general rule is not controverted, that a purchaser from a fraudulent vendee, for value and without notice of the fraud, will be protected against the right and equity of the original vendor to disaffirm the sale and reclaim the property, but the question raised is whether, in the sense of the rule, *knowledge and notice* are equivalent and synonymous? Notice may be gener-

ally classified into actual and constructive." "The legal and practical purposes of the generality of cases may be regarded as most simple and easy of application; that notice is actual when there is positive information of a fact, and constructive when the information is either conclusively or *prima facie* presumed from certain existing facts; when not conclusive, being strictly implied or inferred notice. Conclusive constructive notices allow no proof of want of information, but when implied, the presumption may be rebutted; either, when established, having the same legal effect. Knowledge may also be classified, in a legal sense, as positive and imputed—imputed, when the means of knowledge exists, known and accessible to the party and capable of communicating positive information. *When there is knowledge, notice, as legally and technically understood, becomes immaterial.* It is only material when, in the absence of knowledge, it produces the same results. However closely actual notice may, in many instances, approximate knowledge and constructive notice may be its equivalent in effect; there may be actual notice without knowledge, and when constructive notice is made, the test to determine priorities of right, it may fall short of knowledge and be sufficient. When the purpose is to subordinate to a prior existing equity or right in another, the subsequently acquired right of a party who has information of collateral facts sufficient to put him on inquiry, which, if pursued, would lead to the truth, such information is regarded as sufficient to charge him with notice of the ultimate fact, but is not tantamount to either knowledge or express notice, nor is either a necessary inference." Wade Notice, §§ 3, 10, 36 *a*; 2 Pom. Eq. Jur. §§ 592, 593. "When a party sets up, in equity, the defense of being *bona fide*, he is required to deny, not merely knowledge, but

notice of the main fact and all the facts and circumstances charged from which it may be implied." In such case there is a difference between the want of knowledge and the want of notice. "The party may have been notified without being made to know the prior right," 16 Mees and W. 355; 31 Ala. 177. In 2d Pom. Eq. Jur., Notice is defined thus: "Within the meaning of the rules 'notice' may, I think, be correctly defined as the *information concerning a fact*, actually communicated to a party by an authorized person or actually derived by him from a proper source, or else presumed by law to have been acquired by him, which information is regarded as equivalent, *in its legal effects, to full knowledge of the fact*, and to which the law attributes the same consequences as would be imputed to knowledge. It should be most carefully observed that the notice thus defined is not knowledge, nor does it assume that knowledge necessarily results." "To overcome the defense of *bona fide* purchasers without notice, the plaintiff is not required to prove that the defendants had *knowledge* of the fraud of Hawkins."

If this learned opinion be sound law, the decree below is the reverse, with all due deference and personal regard.

REVIEW OF REASONS FOR THE JUDGMENT BELOW.

It is manifest that the reasons on the rehearing, as to Erman, proceed upon an assumption, that complainant *filed a petition* on the law side of the Court, seeking relief against Erman, upon grounds as irreconcilable at civil law as in the federal law courts. We submit that no such pleading exists or is found in the transcript, and the fact found is purely gratuitous and unsupported in the Record.

The Court says: "*The service of the petition on him*"

(Erman) was like saying to him: 'You must not pay those notes, if your contract of pledge was in aid of the simulated transactions and schemes of Dreyfus entered into for the purpose of swindling his creditors, and that if you do pay them in aid of such simulated transactions, and they at the trial of these suits are proved up against you the law will make you pay the same amounts to us," and "under the doctrine of notice, contended for by complainants' counsel can it be said in law that Erman was charged to take notice of anything beyond that which could be passed on in the Court from which the notice *by way of petitions* emanated?"

And again: "The plaintiffs in the several suits at law *chose to proceed for relief* in an action at law, and the result of the trial of the only issue which could be heard in these suits *was that Erman's contract* was a real one and not a simulation."

We reiterate, that no such pleadings are in the record.

1st. *As to service of the petition on him* (Erman) complainants challenge the existence or production of any *petition* from them, that contained Erman or Meyer's name and served on him or them in the suit at law, unless an answer to Erman's intervention and third opposition in plaintiff's suit vs. Dreyfus, can be treated as a petition, and if it is, it was not or did not need to be served under the jurisprudence of Louisiana or United States Courts.

The Court insists that the Jury decided that Erman's contract was a "real" one, and not a simulation, (p. 827, Fed. Rep. April 20, 1886,) "consequently, the Court concludes Erman was not bound by any other defect of title or knowledge of facts showing *mala fides*." It is submitted this proposition is pregnant with a total misapprehension of the pleadings, and is a *non-sequitur*. The question of real delivery

vel non, and of fraud, was as to Meyer's title and not to the *reality* of the act of pledge to Erman, or of its fraudulent character; otherwise, as the proposition is stated, the Jury in the law case did what it had no right to do, *i. e.*, passed on the question of Meyer's fraudulent possession, and in direct contravention of the statement on p. 826, that "the Court ruled that the issue as to whether the pledge was a real one, though fraudulent, could not be heard in an action at law." His Honor below has unconsciously mixed two very different issues. Judge Billings had ruled on the law side, that the Court had no jurisdiction to test the validity of *Meyer's title* because a *real* delivery was made and could only be inquired into and revoked on the chancery side, and there was no ruling as to Erman's pretended contract of pledge being *real*. See allegations in supplemental and original bill. Therefore, it is only by a transposition of the pleadings and misconception of the record, that the learned Judge confounds the doctrine of notice and knowledge with the irrelevant principle of the law of *lis pendens*.

Conceding that "Erman knew that Meyer's title was not simulated, and that he was also bound to know that the allegation of fraud was not examinable on the law side of the Court," as stated in the decision, then the fact follows that he was fully apprised of an outstanding prior equitable title or lien resulting from the seizure made *pari passu* with his alleged pledge. 11 L. R. 529; 14 Vesey, 289; 3 Eq. L. R. 274; 19 H. Lords, 90. He was bound to know, and did know, that this claim was liable to chancery litigation, the result of which would govern, attract or defeat the legal title for fraud, if not a mere simulation. This demarcation between law and equity in the Federal courts is fundamental and constitutional. It fastens on Erman positive knowledge of the possible defeat

in equity, sufficient to have put him on inquiry and to have prevented him from at least paying his two notes for $10,000 or stopping their negotiation, on the ground of apprehended eviction or failure of consideration. The court below seems to err in confounding the law as to technical notice of a suit which creates *lis pendens* as to third parties, with knowledge of facts which would put an ordinary prudent man on inquiry to rebut the presumption of *mala fides*.

We call attention to the fact that Erman knew by 10 o'clock on Monday of the Dreyfus' failure, the removal and seizure of the pledged goods, and was in ample time to stop payment of his checks for $5000, as it cannot be denied that our banks only begin to pay checks at and after 10 o'clock A. M. He took no steps to stop payment of his checks or of the negotiation of his two notes, then in Meyer's hands.

On p. 132, we observe that the word "*date*" in the two notes of A. Erman is blank; but pages 148, 147, 141, 134, 136, 182, and the answers of Meyer to the Bill, p. 18, and Erman, p. 15, amply show that interest was from date until paid, and so interpreted by the defendants.

If the respondents' (Freiburg and Workum) answer, p. 74, to Erman's intervention be considered a "petition," warning him as to simulation upon what principle of law, was it not notice also that his right of pledge was equally in jeopardy, if Meyer's title were tainted with and declared to be founded in fraud, null and void? Ought it not to have prevented him from paying the two notes for $5000 each, or at least he should have stopped their negotiation, in order to diminish the loss of honest creditors? As to the last note, it was not negotiated, but paid to Meyer, and at Erman's peril, with full knowledge of Meyer's defective title. Erman's conduct is not innocent, and reeks with pal-

pable *mala fides ab initio*, marked by gross and culpable negligence of his neighbors' rights.

When Erman consulted Singleton & Browne, it must have occurred to these able and conscientious advisers that the first thing their client must do, was to stop the negotiation of his two notes for $10,000, and thus diminish his risk or loss. We have a right to infer this fact, without positive proof, from their known ability and experience. Therefore, Erman's "masterly inactivity" is inconsistent with honesty, and indicates that this was not the role he was to play in the fraud and conspiracy of his confederates. It explains the absence of the precautions of honest men to prevent loss in presence of an impending peril to their pledgor's title. He was to be the simple-minded, innocent capitalist and pledgee, even though his notes were collected by the fraudulent pledgor, with or without negotiation, unconcerned by the golden rule of morals, law, equity and religion, of "doing unto others as he would that others do unto him." R. C. C. 1965. "Now if a person does not stop his hands, but gets the legal estate when he knew the right in equity was in another, *machinatur ad circumviendum*, and it is a maxim in our law, too, that "*fraus et dolus nemini patrocinari debent.*" 3 Atk. 655; Co. 3 Rep. 78, 6.

We invoke your Honors' attention to the fact that the judgment on pp. 78 and 79 was rendered *April 7th, 1886*, in Freiberg & Workum vs. Dreyfus, No. 10,378, and it decided the issues of law and fact in his case, on the law side, in favor of Erman as intervenor, *for the first time*. This was only *after* the equity suit, p. 241, was decided on Feb. 20, 1886. Now, on p. 132, the two notes of Erman fell due the 2d January, 1884, for $5000, and 29th January, 1884, for $5000, and we submit that Erman's voluntary payment of them before the issue of simulation in plaintiff's

suit at law, before the issue of fraudulent transfer of the property to Meyer, and before the validity of his pledge in the equity suit was decided in his favor, was a deliberate payment at his peril after full and complete notice and knowledge, and he is clearly bound to respond in this case. Even if Judge Boarman's theory of notice as to fraud were supportable by reason or authority, it does not apply to the facts in complainant's case, proven by the Record, because the issue of simulation was not then decided, as in the Weiller case (see p. 75), filed Nov. 13th, 1883, where he was notified by its filing that "Respondent denies that intervenor is pledgee in good faith, or an innocent third party, because the failure and conduct of Dreyfus was notorious, and published in the newspapers of this city on Sunday and Monday, the 28th and 29th October, and he was bound to inquire into the validity of his (Meyer's) pretended title, and that it is untrue that intervenor holds any valid act of pledge on said whiskey, as enacted by the laws of Louisiana, and that the possession of Meyer must be 'untainted with fraud and complicity.' In what other manner could notice of defect of title be brought home to a party claiming innocence? Were not these allegations sufficient to put him on guard not to pay the two notes, even though they fell due prior to the filing of the bill in chancery, but before the question of simulation was tried on the law side? It is from knowledge and not service of a bill in equity by which the law adjusts the rights of litigants in such cases.

In 19 How. 365, the Supreme Court says: "The word notice, as used by this Court on the occasion referred to, we think must be understood in the same sense as knowledge and that is one of its usual and appropriate significations." 13 Pet. 65; 14 Pet. 318.

Now your Honors know, judicially, that under Lou-

isiana jurisprudence, law and equity are blended and administered together; so your Honors will find that the only "petition" in the transcript was an ordinary suit vs. Joseph Dreyfus, with affidavit, bond for sequestration and attachment, with garnishee process against Dreyfus' debtors. Neither Meyer nor Erman's name is mentioned in any of these original proceedings, and no petition was ever served on either, the Court below to the contrary notwithstanding.

On Monday, the 29th October, 1883, the Marshal seized the goods without obstruction as Dreyfus' in the store of Weill, where they had been clandestinely and surreptitiously deposited at dead of night on Sunday, *a dies non*, in order to screen them from the pursuit of Dreyfus' creditors, assisted by Meyer, his son-in-law, who Erman in his intervention claimed was a valid purchaser. Several days after the seizure by the Marshal, say November 6th, 1883, eight days after, Erman comes into plaintiff's suit vs. Dreyfus, and under the Code of Practice, Arts. 389 to 398, and intervenes by way of third opposition. (See Transcript, p. 70). Meyer *never appeared to maintain his title as owner;* Erman claimed to hold as pledgee from Meyer. "The Articles of the Code, 389 and 395, say that a third opponent and intervenor is a third person, not originally a party to the suit," etc.; and Article 397 says "must be made before the court which has granted the order of seizure." Article 398 says: "If the opposition has for its object to set aside the order of seizure as having been effected on property not belonging to the party, but owned, on the contrary, by the third person making the opposition, it must be done by means of a petition, which, together with a citation, must be served on the party making the seizure as in ordinary suits; but such opposition shall be considered as a separate demand, distinct from the

suit in which the order was granted. Art. 393: "The intervention must be formed by a petition addressed to the court before which the principal demand has been brought; it must set forth the grounds on which the cause is supported and must be served on the party against which it is directed, in order that he may answer," etc.; all which shows that instead of "plaintiffs in the several suits at law choosing to proceed for relief in an action at law," wherein fraud could not be tried, but only simulation, it was the intervenor in a case at law denying the jurisdiction of the court in which he chose to intervene under the Code of Practice, in contravention of the principle: "Being considered as plaintiff, intervenor must follow the jurisdiction of the defendant." Art. 392, C. P.; 14 An. 427; 19 L. 154; 6 N. S. 658.

"Without jurisdiction of the main action, the demand in intervention, which is but an accessory, *also ends.*" 14 An. 427. Intervenors have no right to come in and contest the jurisdiction of the court in which plaintiff has a right to sue. They must take the case as they find it, and if their interests are affected it is the result of their own acts." 19 L. R. 165, Kenner vs. Holliday; C. P. 392, 393, 397. "It is clear the intervenors have no right to come in and contest the jurisdiction of the court in which the plaintiff certainly had a right to sue the defendants." We submit, under the circumstances of this case, 19 L. R. 165, it was cruel in the chancellor to taunt plaintiffs with going into a court for relief on questions it was constitutionally incapable of entertaining or giving relief. The responsibility rests entirely on intervenor, who is plaintiff in intervention, and complainant should not suffer for his sins.

UPON THE DEMURRER, JURISDICTION.

17 Wall. 530: "The jurisdiction of a Court of

equity to reach the property of a debtor, justly applicable to the payment of his debts, even when there is no specific lien on the property, is undoubted, and is a very ancient jurisdiction." P. Works vs. Col. College; Krippendorf vs Hyde, 110 U. S. p. 277, and Gumbel vs. Pitkin, 124 U.S.; 15 How. 415. "It is objected that equity can exercise no jurisdiction in the case, as adequate relief may be obtained at law," and the reply is, complainants are in equity because intervenors objected to relief at law. "There may be a legal remedy, and yet if a more complete remedy can be had in Chancery, it is a sufficient ground for jurisdiction." See also 7 Cr. 89, Russell vs. Clark, Ex. and 20 Fed. R. 801.

It comes with ill grace from Erman, whose objections forced complainants into equity because, at law, he urged that their remedy for fraud was not adequate, to demur to the jurisdiction now, because their remedy at law was adequate. Such a smothering process is as inexcusable as the bad faith of Rhadamistus. Trans. p. 195.

As to Fraud.

"Where a grantee in a deed made to defraud creditors of grantor knows of such fraudulent intent, or has knowledge of facts sufficient to excite the suspicions of a prudent man and put him on inquiry, he makes himself a party to the fraud." Bartels vs. Gibson, 17 Fed. R. 293. "Actual knowledge on part of vendee of fraudulent intent of vendor, is not necessary to render sale void. If facts brought to his attention are such as to awaken suspicion, and lead a man of ordinary prudence to make inquiry, he is chargeable with notice, and with participation in the fraud." Gollaber vs. Martin, 6 Pac. Rep. 267; 5 J. J. Marsh 545; 27 Ala. 607, 9 N. W. Rep. 534; 12 Tiffany, 70; 4 Keyes (N. Y.) 461. But if the Germania Bank is to

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Daniel on Neg. Ins. §§ 769, 880; Morri
R. p. 813, May 4th, 1887.

The following authorities support complainant's pleadings and argument: Baker vs. Bliss, 12 Tiff. 75 to 80; 15 N.Y. 362; directly in point and on all fours with case at bar; we also cite 11 L. R. 529, Muse vs. Yarborough. "A contract tainted with fraud, confers no rights and property fraudulently disposed of, is regarded as still belonging to the debtor, at the moment of his failure, so far as the interest of his creditors are concerned." This case was against purchasers under a sheriff's deed, and the Court said: "The execution was merely a species of machinery by which a fraudulent alienation was to be effected." This doctrine is elementary in equity and common law, and supported by the ablest chancellors in England and this country. In second John Ch. cases, Ch. Kent. p. 42, Hildreth vs. Sands, Robert Sands, like Erman, came in and denied the fraud, and claimed to be "an innocent and *bona fide* purchaser for a valuable consideration." Ch. Kent decided. "If the deed is fraudulent from Robert Sands to Comfort Sands, it could not stand, even if the grantee was, as he alleges, innocent of the fraud." It was observed, in a late case in Vesey (Hugenin vs. Basely, 14 Vesey, 289) "that interests obtained through fraud of another person cannot be maintained;" and the case of Bridgman vs. Green, (5 Vesey, 627) is an express authority that interests so gained can be set aside. Lord Hardwick observed, in that case, "that if a person could get out of the reach of the doctrines of the Court by giving interests to third

equity to reach the property of a debtor, justly applicable to the payment of his debts, even when there is no specific lien on the property, is undoubted, and is a very ancient jurisdiction." P. Works vs. Col. College; Krippendorf vs Hyde, 110 U. S. p. 277, and Gumbel vs. Pitkin, 124 U.S.; 15 How. 415. "It is objected that equity can exercise no jurisdiction in the case, as adequate relief may be obtained at law," and the reply is, complainants are in equity because intervenors objected to relief at law. "There may be a legal remedy, and yet if a more complete remedy can be had in Chancery, it is a sufficient ground for jurisdiction." See also 7 Cr. 89, Russell vs. Clark, Ex. and 20 Fed. R. 801.

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be viewed as a purchaser, it need not have notice of the particular fraud or equity, or illegality, in order to be affected by it. It is sufficient that there be notice, actual or constructive, that there is some fraud, equity or illegality affecting the original parties." Daniel on Neg. Ins. §§ 769, 880; Morris vs. Cain, So. R. p. 813, May 4th, 1887.

Story Eq § 399
1 Ryan & Coll
Ex R p 303
1 Ch Smith
355 & 359

The following authorities support complainant's pleadings and argument: Baker vs. Bliss, 12 Tiff. 75 to 80; 15 N.Y. 362; directly in point and on all fours with case at bar; we also cite 11 L. R. 529, Muse vs. Yarborough. "A contract tainted with fraud, confers no rights and property fraudulently disposed of, is regarded as still belonging to the debtor, at the moment of his failure, so far as the interest of his creditors are concerned." This case was against purchasers under a sheriff's deed, and the Court said: "The execution was merely a species of machinery by which a fraudulent alienation was to be effected." This doctrine is elementary in equity and common law, and supported by the ablest chancellors in England and this country. In second John Ch. cases, Ch. Kent. p. 42, Hildreth vs. Sands, Robert Sands, like Erman, came in and denied the fraud, and claimed to be "an innocent and *bona fide* purchaser for a valuable consideration." Ch. Kent decided. "If the deed is fraudulent from Robert Sands to Comfort Sands, it could not stand, even if the grantee was, as he alleges, innocent of the fraud." It was observed, in a late case in Vesey (Hugenin vs. Basely, 14 Vesey, 289) "that interests obtained through fraud of another person cannot be maintained;" and the case of Bridgman vs. Green, (5 Vesey, 627) is an express authority that interests so gained can be set aside. Lord Hardwick observed, in that case, "that if a person could get out of the reach of the doctrines of the Court by giving interests to third

parties, instead of reserving them to himself, it would be almost impossible ever to reach a case of fraud:" Lord Ch. J. Wilmot held the same. Lord Thurlow held it also, to be against conscience that one person should hold a benefit derived through the fraud of another. "In a recent case in the House of Lords (1 Dow's Rep. 30) Lord Redesdale very much doubted whether a purchaser for a valuable consideration, even under a decree, fraudulently obtained, though ignorant of the fraud, could protect himself as in 11 L. R. 529." "The fact that a legal title has been obtained, through a transaction founded in fraud, is not alone sufficient to prevent the interference of a Court of Equity." White and Tudor, leading cases in Eq. 3d Ed. Vol. 11, p. 25; Donaldson vs. Gillott, Law Rep. 3 Eq. 274 and 19 H. Lords Cases, 90, and the case of the Empress, decided in the Court of Admiralty, where a fraudulent sale was set aside, notwithstanding purchaser had a legal title. Ch. Kent says: "The principle advanced by these high authorities is by no means new or uncommon. It has been laid down in the Books at different and distant periods," Bennett vs. Wade, Dick. Rep. 84, and Davidson vs. Russel, Dick. Rep. 761, that "fraud vitiates a deed *in toto*, though persons no way privy to the fraud are beneficially interested in such deed." The words of J. Dodderige in Shepherd's Touchstone, p. 66, are to the same effect. "Albeit," he says, "those to whom a deed of fraud is made knew nothing of the fraud, yet is the deed fraudulent in that case also, as well as where they are privy to it." Ch. Kent says, "the question then to be considered is whether from the pleadings and proofs there appears to be satisfactory evidence of fraud either in fact or in law, sufficient to set aside the deed as against plaintiff. In the case at bar the Court found as a fact the title of Meyer from Dreyfus' tainted

with fraud and *entered up decrees to that effect*, p. 241. These rules may work hardship, but they are founded on just and sound principles of substantial justice to prevent the triumphs of dishonesty, and are clearly deducible from the maxims of *'caveat emptor'* and *noscitur a sociis.'* " (See 2 Kent 531 4th Ed.) "Such rules are made to destroy the very temptation to fraud, in cases and modes calculated to invite it and because such transactions may be grossly fraudulent, and the aggrieved party not able to show it from the character of private agreements and the infirmity of human testimony." "However innocent such transactions may be in a given case, they are dangerous as precedents and poisonous in their consequences and the wise policy of the law puts the *sting of disability* into the temptation, and bars the door against every species of imposition which might be inaccessible to the eye of the Court" (p. 532 Ch. Kent, 2d Vol.) In 2d Wend. 596, Chs. O'Connor urged and gained his suit because the transaction was secret, known only to two persons besides the parties, but in the case at bar, the transaction was only known to *the two parties*, without a witness, concocted in Dreyfus' house Sunday night, while his store was under seizure and carried out in a shameless and bungling manner, and under the most suspicious circumstances.

Conveyances made to hinder and delay or defraud creditors held void as to them, although founded on a full and valuable consideration Boazman vs. Allen, 3 Stewart Ala. 243; 3 Ind. 574; 12 Ind. 259-264; 33 Ind. 452; 35 Ind. 170; 6 Marsh. Ky. 70; 11 Miss. (3 Sm. and M.) 74; 6 Humphrey Tenn. 509; 2 Ga. 1; 24 How. 224; 10 Tex. 419; 19 Tex. 257; 2 John Ch. 25; 9 Mo. 605; 1 Harp. Eq. 145; 37 Cal. 328; 13 Wis. 460; 1 Rand. 213; 6 Neb. 93.

The reason is laid down in Twynne's case, " that a

person paying full consideration may not necessarily be a *bona fide* purchaser" (or pledgee). "He must be free from *suspicion* of complicity to help the fraudulent transferror." This is a well recognized principle of law, and courts have held that the purchaser is to be charged with notice of the character of the transaction when he is acquainted with the circumstances sufficiently to convince a court or jury that he knew the facts (19 N. J. Eq. 105), or if he has a knowledge of such facts as would excite the suspicions of an ordinary prudent man and fails to make inquiry and purchases from a fraudulent vendor, he is not a *bona fide* purchaser or a purchaser in good faith, and will be charged with notice of any fraud upon creditors affected by the sale or transfer." State vs. Estell, 6 Mo. App. 6. "Any other view is an 'inlet to fraud.'" Ch. Kent, 3d Johns Ch. R. 481; 5 Cowen, 72; 12 Tiffany, 70; 4 Keys, 461. "Anything secret or out of the usual course of dealing or business is a badge of fraud." 7 Cow. 303; 33 An. (La.) 1031.

Apply these principles to the solitary statement in the evidence, p. 183, that he gave Meyer the check for the cash advanced on his loan or pledge for $5000, and trusted to him to bring the amount of the commissions, $375, back (Trans. 183), without having deducted it from the check." This is incredible, to say nothing of other crushing facts that render the egregious fraud of Erman *"luce clarior."*

See also Flanagan vs. Witherell, 5 Whart. 280; 5 Watts 100, 164; 10 Casey, 152; 2 Grant, 319; 5 Philad. 361: Hahn vs. Salmon, 20 Fed. Rep. p. 801; 10 An. R. 29; 1 Cr. 314; 61 Md., Goodman vs. Wineland, 3 Cr. 73; 20 How. 448; 2 Black. 532; 1 Atkins. 490.

Plaintiffs invoke the ethical doctrine of 6th An. R. 811, 814, Bank of Mobile vs. Harris, by this august tribunal of final resort to reverse the decree. "Our laws

declare the property of a debtor the common pledge of his creditors, and that the proceeds of its sale must be distributed among them ratably, unless there exist among the creditors some lawful cause of preference." C. C. Art. 3150. "We must exercise the discretion conferred on us by the Code and look through the apparent into the real transactions of the parties which are covered by a thin veil. We could not doubt the simulations (or frauds) of the transactions, even if the parties were strangers, the presumption is greatly increased by their relationship." "These investigations, which have become deplorably common in our Courts, are painful indeed, but it is our sacred duty to search the transactions, out of which they originate, to the bottom and strike at the root of the evil by annulling them as the only means of their prevention. Courts, mortgage offices and paper titles must not be used as the means of depriving men of their property, instead of securing their rights." See also (6 An. R. 648, Birdsale vs. Lackey, and Walker's Am. Law, pp. 614, 615). "*Fraud vitiates everything it touches.*" "*Procul, O Procul! este profani, conclamat vates; totoque absistite luco.*"

18 Duranton, §521, Nantissement: "This statement, whether in the act of pledge or thereto annexed, must, as the Article 2074 says, contain a description of the kind or species and of the nature of the things pledged and of their quality, weight and measure, so that the parties may not, by a fraudulent collusion, substitute other goods of a different species of greater value, or add to them goods not affected by the pledge, to the prejudice of other creditors, and also that it may be known what goods the pledgee must return to the pledgor. Therefore, it will not suffice in the act or annexed statement, that so many pieces of cloth were pledged; you must specify the quality of the art-

icles of cloth, because there is such a plenitude of kinds of different values."

As to the ingredients of "a pledge," complainants rely on 33d An. 319; Troplong 311, 312, 313; Nantissement, Dalloz Rep. Vol. 32, p. 445; Duranton V. 18, 525, 528, 531; 6th An. 476; 26 An. 35; 21 Wall. 360 and 96 U. S. p. 476.

Even conceding, for argument sake, that Erman held a valid pledge, the case of Horner vs. Dennis, in 34 An., p. 389, limits his right to prevent the seizure and sale. "It is now well settled, in our jurisprudence, that the property of any nature held in pledge by a creditor may be seized from his possession by another creditor of the common debtor, and sold subject to the pledge."

"The only right which the law secures to the pledgee is to satisfy his debt, by privilege and in preference to the other creditors of his debtor, out of the product of the movable, corporeal or incorporeal, which has thus been burdened." C. C. 3157.

"Nothing in the nature of the contract can authorize the pledgee to hold indefinitely the property pledged, which is usually far in excess of the amount thereby secured, and to thus deprive other creditors of recourse on their debtors' property." Were it otherwise, the creditor in possession would become, by his own wrong, proprietor of the pledge, and that in open violation of the law, which prohibits him from acquiring it by such means, and expressly declares that it is only a deposit to secure his debt. 2 N. S. 22; 1 N. S. 417; 31 An. 865-870.

It was therefore competent for the seizing creditors to seize, even in Horner's possession. And again: "An unbroken line of decisions of this Court has settled that point adversely to plaintiff. His right was to claim priority of privilege over the seizing creditor

on the proceeds of the property pledged to him and seized by his debtors' judgment creditors, and his remedy was, by third opposition, to regulate the effects of the seizure, or by injunction arresting the proceeds in the hands of the sheriff, subject to his ranking privilege; but he is not warranted in law to enjoin the seizure of the thing pledged, because he claims a superior privilege." 5. R. 496, and authorities cited in 34 An. p. 390.

In the case at bar Erman has been permitted to defeat the seizure and dispose of the pledged goods as his property, while the bill in equity and proceedings thereunder were pending, to test the fraudulent character of his author's title, contrary to our settled jurisprudence.

" Privileges are of strict right and parties claiming them must conform to the requirements of law. It is required, in order to create a pledge, not only that delivery should accompany the *private deed*, but that the instrument itself should exhibit the nature and extent of the rights and obligations of the contracting parties *reciprocally*." 15 An. 165, Martin vs. Creditors. In this class of cases, while the presumption of fraud or knowledge may be rebutted or repelled, it is indubitable that the tendency of the authorities has been to apply the law rigorously to the circumstances. "*Judges have required, in order to sustain these transfers*, such palpable and unequivocal *evidence of good faith, notoriety and exercise of authority as has rarely been found* attending these transactions." 1 Hoffman's Ch. R. pp. 520-521; 15 A. R., Davis vs. Stern, p. 177. " The sole question is whether there was an open and actual change of possession and control, the exclusion of the assignor and the notorious and avowed dominion of the assignee." The *bona fides* of the transaction and the absence of the intent to defraud is not enough

to render the sale valid," p. 522, and 20 Wend. 507. The court below found that there was *fraud* as between Dreyfus and Meyer, and avoided the "giving in payment," which necessarily destroyed the title under which Erman asserted a pledge, and even if it be conceded "an act in writing" were produced by him, it was void because he was affected with constructive knowledge. In matters of fraud positive proof of knowledge is not required. Where there is a general report of a fact, slight evidence, "*semi-plenæ probationes*," as Roccus says, Note 78, "*shall be enough.*" It is extremely difficult to ferret out fraud, and but in rare cases is it susceptible of positive and direct proof is the reason for the relaxation of the rule invoked by plaintiff. 15 An. 178, Davis vs. Stern.

Considering the intimacy of Erman with Dreyfus and Meyer, an inmate sleeping at their domicil on Sunday night, the 28th October, 1883; the notoriety and publicity as to the midnight transportation of a stock of merchandise, detailed in the Sunday and Monday papers, the Sunday seizures and the insolvency of Dreyfus being common town talk, the exceptional facility he possessed of ascertaining all the facts as to the origin of title, the interrupted possession after the midnight delivery to Meyer, the signing of storage receipts by Weill on Sunday night at his home; Erman's inability to loan more than $5000 without going into debt, the paltry compensation for the risk of $15,000, with no protection against fire, his nonchalance in not arresting the negotiation of the notes or his checks, the consideration of which was imperiled by actual seizure, as the property of Dreyfus; the danger of the revocatory action for fraud, sufficient to put him on inquiry; all these facts instruct us that courts of justice are but discharging their functions as Judges, when they re-

fuse to believe that the pretended innocence or ignorance was not the result of culpable negligence or complete indifference to the legal and equitable rights of others, who are injured by the transaction, and your Honors are only performing a sacred duty in preventing the triumph of fraud and collusion, by reversing the decree.

The attention of the Court is called to pp. 192-193, and it will be seen that Dreyfus' bill of $19,927.87, is *not receipted* or closed by any acknowledgment of indebtedness. It contains the number of gallons, or measure which is essential to be contained in the description of goods pledged and to accompany the delivery, and the warehouse receipts contain no measurement or quantity to create a valid pledge.

18 Duranton, p. 584, §510, says of Art. C. N. 2074, upon the essential requirements as to "quality, weight and measure in the statement annexed to the written act of pledge, that it was inserted to prevent frauds, which might easily be committed towards the other creditors, either by pretending there was a pledge, or that the amount of debt is not specified, and finally because there is no certainty as to the nature and quantity of the objects affected, to pay the debt." §520: "This statement should be signed by pledgor and pledgee, or contain their declaration that they cannot write." The warehouse receipts cannot supply this statement and even if they do they contain no marks, no weight, no measure, no quantity, no quality to identify the goods pledged, and are not signed by the debtor or creditor so as to be regarded as the required statement under the Article of the Civil Code, identical with C. N. (except as to registry).

"Warehouse receipts are not technically negotiable, but stand in the place of the property itself; the delivery of the receipts has the same effect in trans-

ferring the title to the property, as the delivery of the property itself." Prof. Conklin's Handy Manual, p. 175; Sup. Ct. 1874, 1 Hunter, 193.

There is a clerical error on p. 134, as to check of 25$, it should be $2500, and should so read.

Erman says, p. 140: "He didn't show me anything, only he said he had Meyer Weill's receipts;" and p. 146, "Meyer did not exhibit any invoice of those goods showing their value or their contents, and did not at any time during the transaction." On pp. 146 and 147, Erman confesses enough to show that by the law of Louisiana, he did not have the shadow of a valid pledge.

We refrain from swelling this brief by referring to the evasions and contradictions of the defendant's testimony, as they are too apparent to escape the scrutiny of this Honorable Court.

It is proper to call the attention of the Court to the fact that the suit of complainants on the law side was never submitted to a jury, and is therefore totally unaffected by the verdict in the Weiller case as to simulation. It was the ruling in the Weiller case which caused complainants to file their bill on the chancery side to remove the cloud on Dreyfus' title to the goods, leaving their suit at law pending and undecided, and consequently the reasons for the decree have no foundation in fact to apply to the complainants' bill. The agreement of counsel only applies to using the testimony in Weiller to save costs. It is therefore inaccurate in saying, "The *plaintiffs in the several suits at law* chose to proceed for relief in an action at law, and the result of the trial of the only issue which could be heard in those suits was that Erman's contract was a real one, and not a simulation."

Only one plaintiff (Weiller) tried his case before a

jury, and that case was for an amount below the jurisdiction of this Court; otherwise it would have been here for review. The verdict and judgment in that case are, therefore, *res inter alios*, and have no effect on plaintiff's rights whatever. The judgment in Erman's favor on the law side in this case was not rendered until after the decree in the equity suit in 1886. See Transcript, p. 98.

All of which is respectfully submitted.

David C. Labatt

APPENDIX.

Comments on the Testimony.

To show how reckless of truth is Erman's testimony, we call your Honors' attention to p. 142, in answer to the following question from his own counsel:

"When did you learn or first learn of Dreyfus' attempt to remove his goods, or to dispose of his goods, or to make away with them, or to sell them, or of the attachments that were made against them? Answer. Well, I don't know anything about all those things that you mention; that is, I didn't know anything about all those things that you mention, *until* half-past 10 o'clock Monday, about half-past ten. I didn't know a thing about it. Q. Monday morning? A. Yes, sir."

Here he confesses that on Monday morning he knew of the attachments against Dreyfus on the removed goods. Now on p. 166, he says: "He came to town by a special locomotive, and went to Weill's store. Being asked by counsel, 'you knew, on Monday, when you left here to go home, that Dreyfus' goods had been removed from his store? he answers: "No, sir; I was told that he had bursted, but I did not know anything about the removal of the goods." Q. You did not know it at that time? A. No, sir; not until I came back on Tuesday. To Mr. Browne, he says, he knew of this removal and attachments on Monday morning at half-past 10, and to Mr. Philips, that he did not know of the removal until he came back on Tuesday. Again, p. 167, this witness says that on Tuesday, Weill told him, that he, Weill, "did not know that the goods were seized." This is also false, because the record, p. 120, shows that the Marshal seized on 29th October, 1883, *i. e.*, Monday, and Weill was made garnishee before Tuesday and could

not have told such a falsehood. See Transcript, pp. 68, 69 and 120, returns of Marshal. It is irresistible, that if he knew of Dreyfus' "bursting," it must have been communicated with the details of the exposure published and known by the community on Sunday and Monday, touching the removal of his stock at midnight; and after clearly admitting his knowledge at half-past 10 o'clock Monday morning, he goes to Morgan City, unconcerned, and there he is summoned to N. O. to see about the attachments of the goods in Weill's store on Tuesday, for the first time, as he says to Mr. Philips. Thus out of his own mouth is "he convicted of untruth in a material issue." His whole testimony is evasive, contradictory and unworthy of credence. The above contradiction is fully confirmed by his answer to Int. p. 18: "I first learned that these goods were those removed from Joseph Dreyfus' store on Monday, October 29th, 1883, between 9 and 10 o'clock Monday morning, when I heard that the goods pledged to me were the same goods which had been removed from Dreyfus' store on Sunday, the preceding day, and I made no investigation or inquiry of Meyer concerning his title to the goods pledged."

"*It was naught, it was naught, and he went on his way rejoicing.*"

We also call your Honors' attention to the testimony of Mr. Geo. Theard, a reliable member of our bar, who swears positively Mr. Weill said on Tuesday, the 30th, that he did not know whose goods they were, which were found in "his store," notwithstanding the five receipts he had signed on Sunday night at home.

Erman is more flatly contradicted by his witness, Weill, at p. 216, as to the time he first learned of the removal and seizures.

Weill says, p. 216: "Q. And you did not know it

on Monday? A. Until they were seized; then I found out. *All the world knew it*—that they came from Joseph Dreyfus' store" And in connection with this inquiry, on p. 215: He "believes that it was Monday" that he first saw Erman at his store; the next day after the receipt was given;" and on p. 222 Weill reiterates it was on Monday *three times*, and on pp. 224 and 222, he says: "It was on Monday that I took Erman to Singleton & Browne's law office." Contrast these statements with Erman's, p. 163: "Q. Did you hear nothing, then, on Monday morning, about the failure of Dreyfus? A. Nothing whatever." And p. 164: "Q. You did not go to Meyer Weill's warehouse to look at them? No, sir; *not on Monday.*" And p. 165: "Q. How long did you stay in the City on Monday? A. I stayed in the City till 12 o'clock (noon). Q. You heard nothing, then, of the moving of the goods or the failure of Dreyfus? A. *I heard of the failure before I left.*" On p. 166: "Q. What time did you go to Meyer Weill's store on Monday? A. *I did not go to Meyer Weill's store at all.* Q. I thought you said you went there? A. *No, sir.* Q. When did you go to Meyer Weill's store? A. I went to Meyer Weill's store after I came back Wednesday, when I *heard that the goods were seized.*" On same page he contradicts himself by saying he went to to Weill's store "on Tuesday, after 3 o'clock." Q. p. 167: "This is the first time you went to Weill's and informed him that you were the owner of these goods, that was on Tuesday after 3 o'clock? A. Yes, sir. Q. You knew you say on Monday when you left here to go home that Dreyfus' goods had been removed from his store? A. No, sir; I was told he was bursted, but I did not know anything about the removal of the goods" (p. 167). Here we have the testimony of a witness deeply interested in notorious facts, known, as

Weill says, "*to all the world,*" on Sunday and Monday, pretending ignorance, contradicted flatly by his own witness and by himself. It is shown that he knew of the failure; he knew of the seizures; he knew of the removal on Monday before 10 o'clock, as "all *the world knew,*" by town talk and the newspapers, yet he, of all men, is regarded by the court below as an innocent third party not affected by this gigantic fraud, which excites our "special wonder."

Again look at p. 147, when questioned by Mr. Labatt: "You did not then before making the loan go to Meyer Weill's or any of his clerks to inspect the goods or see the invoice? A. No, sir; I didn't see the invoice, I merely seen that Meyer Weill had receipted" for the following goods herein mentioned; and we ask if Meyer had the invoice as he pretends was made out Saturday, 27th October, would there have been this figuring of gallons to ascertain the value of the goods? Your Honors' attention is called to the glaring contradictions in the testimony of the three principal witnesses for defendant.

At p. 140, Erman says, "he arrived at 6 o'clock on Sunday night and went to Dreyfus' house, where he met Meyer, who approached him for a loan about 7 o'clock. He told me that he had $20,000 worth of goods in Meyer Weill's warehouse. He did not show me anything, only he said he had Meyer Weill's warehouse receipts. Q. When did he first exhibit those to you? Answer. Sir?" Question repeated, he answered. "The warehouse receipts? Q. Yes. A. He told me that he had them in the evening, but I did not see them until next morning" (140). Now, on p. 158, being asked further by Mr. Philips, says: "I arrived at his (Dreyfus' house), about, early, 6 o'clock in the evening and remained there all night," and on p. 159, he admits meeting Lehman Meyer at Dreyfus' house

on his arrival at 6 o'clock, and they conversed together until I retired, from 6 to 9 o'clock." Here Erman swears that he and Lehman Meyer were at Dreyfus' house together from 6 to 9, and that Meyer told him, he had Weill's warehouse receipts then in his possession, so that he must have got them before 6 o'clock at Weill's house on Sunday night, if this evidence is believed. Now, at p. 163, he is asked: "Did you ask him where the goods were? (This was on Monday—p. 162). A. Yes, sir. Q. Where did he say they were? A. He pulled the documents out of his pocket and he showed me the warehouse receipts, and he said: "Here are the warehouse receipts. I have got that much goods stored at Mr. Meyer Weill's warehouse." Lehman Meyer swears at p. 172, that Erman arrived at Dreyfus' house October 28th, at about half-past 5 o'clock in the evening. We were pretty much together, myself and he, until *we went to bed.* Now, if Meyer and Erman were together from half-past 5 o'clock to 9 o'clock, at Dreyfus' house, how can it be true that at 7 o'clock Sunday night Weill delivered him in person these warehouse receipts signed at his domicile? And how could it be true that Meyer told Erman when he spoke of the loan at about 6 or 7 o'clock, that he had Weill's receipts? The testimony of Mr. Weill at p. 214, if believed, makes it impossible to reconcile the above testimony. He says he gave the receipts to Meyer at his house on Sunday evening about 7 o'clock. "It was night already, about 7 o'clock, may be a little before or after, but about that time. It was in my dining room on Sunday night, at 655 Magazine street." If this be true, how reconcile the statement that Erman and Meyer were together from Erman's arrival at or before 6 till 9, when both retired to bed? And if Meyer's story be true that he had Weill's receipts before the

arrival of Erman, then Weill's statement is not verified, as his residence is many squares distant from Dreyfus' house, so that it is impossible to suppose that if signed at seven at Weill's house, Meyer could have reached Dreyfus' and meet Erman as he says at half-past 5 and remain with him till 9, and both went to bed? And he says p. 172, "I put in right away for business with him. I would show him the papers in a few minutes afterwards—the *warehouse receipts.*" Even this fact is contradicted by Erman at p. 146, who says, "he did not immediately open the matter of business," when Erman arrived; Erman repeats the denial three times.

Again, on p. 182, Lehman Meyer asserts a deliberate untruth, when he swears that the notes he gave Erman bore 8% from the time Erman gave him the money, *i. e.*, the date of the transaction, because the notes at pp. 135-6, show interest was only to run *after maturity.* The fraudulent character of the transaction is disclosed by the extraordinary fact that the borrower has the $15,000 for 58 days without interest, while the lender pays him 8% on $10,000 thereof for 75 days (pp. 132 and 136).

Observe, your Honors, that even Erman is so oblivious that he also testifies, p. 147, that "one interest *stood off the other*, and I only made a commission of 2½ per cent.," while the documents offered by him, of his and Meyer notes, prove this is not true. The transaction being explained to him by Mr. Labatt, (p. 148), he admits the profit was $209, and not $375, by saying: "I don't know whether you may be correct, but I was under an impression that his notes bore interest." On p. 151, Erman exhibits a purpose to evade, in relation to a note of $15,000 of Dreyfus', which he held at the time of the failure, and he shrunk from the cross-examination, because he foresaw that his non-

chalance on hearing of the "smash up and bursting," would not dovetail with such a pecuniary disaster, and might reflect on his ability to invest another $15,000 with the son-in-law, Meyer, on unseen goods, so he endeavors to pose as a disinterested, or secured creditor. He hies to Morgan City, and only came down because his goods were attached, he experiences no interest to speak to Dreyfus, his host, whose wife was so ill, when he saw him (p. 139) next morning down town between 9 and 10 o'clock. He says: "I didn't speak to him at all. I met him going across the P. O. way, but I didn't say anything to him," while "all the world," says Meyer Weill, knew of the failure on Sunday and Monday, and that the goods in Weill's store came from Dreyfus'. Erman was the only "innocent abroad," although he had just completed a loan of $15,000 on merchandise stored at midnight in Weill's store, which came from Dreyfus'!! Another curious fact is that Meyer pretends that he had a detailed invoice (p. 190) dated October 27, 1883, specifying the number of cigars and the measure of every barrel of liquor, amounting to $19,927.87, and if true, why is it that on Monday no invoice was exhibited and no measure mentioned in the warehouse receipts to avoid the figuring as to the value of the goods? The answer is, the invoice was ante-dated and made out afterwards. It also shows a great difference in the gallons of liquor, and brands and prices. Erman says, p. 153: "He showed it to me after the goods were seized," not before, and on p. 146, "it was easy to figure up the value of such an invoice without data of brands, quality or quantity." Such testimony is as worthless as it is absurd. No honest transaction was ever entered into by a merchant on the word of the borrower or such skeleton warehouse receipts.

The Record shows that Lehman Meyer was up all night on Saturday the 27th, and morning of the 28th, Sunday, following the floats and receiving the goods at the back of Weill's store until interrupted by the police; and at daylight, when the police retired, he resumed the removal of more goods, till stopped by the Marshal at about 11 o'clock A. M. It is fairly presumable he was on Sunday hard at work, verifying with Weill the packages and hoisting them up stairs and piling them in some order, preparatory to getting "warehouse receipts."

Considering all these things, and that he was financially "in a sort of pinch, and needed money" (Erman's Test. p. 146); was with Erman that night for four or five hours in Dreyfus' house, is it probable that not a word passed between them of the remarkable events "known to all the world" of the night before, and the Sunday following, while trying to effect a loan on the goods so removed by him and so receipted for by Weill? Erman was told that the borrower was in a "pinch, and needed money" (see p. 154), and yet he says "Meyer exhibited no nervousness—not in the least" (p. 154). This pretended reticence and nonchalance on both sides are an insult to common intelligence to be taken as true.

Connect these assurances with the statement that when this extraordinary transaction was made Erman was out of the country store business in Morgan City, and only carrying on the ice business (p. 155), and "was not in the liquor business at that time, made no investigation, saw no invoice, asked no questions," and it becomes "*plenæ probationes*" in law, that he was *particeps criminis* in Meyer and Dreyfus' fraud on complainants, as found by the Court, as to two out of the three defendants, and ought to have been adjudged equally culpable.

Erman contradicts himself upon the most important facts. On p. 18, he swears: "I first learned these goods were those removed from Joseph Dreyfus' store on Monday morning, October 28th, 1883. My recollection is it was between 9 and 10 o'clock Monday morning when I first heard that the goods pledged to me were the same goods which had been removed from Dreyfus' store on Sunday, the preceding day. I heard that some had been removed during the day on Sunday," and "there was a great deal of talk about it during Monday." This was sworn to on July 2, 1884. Now, on May 13, 1885, p. 163, under cross-examination, Erman swears in answer to "Q. Did you hear nothing, then, on Monday morning, about the failure of Dreyfus? A. Nothing whatever. Q. He did not tell you? A. No, sir. Q. And your friends did not tell you? A. I did not see anybody else while I was in company with Meyer and, therefore, I did not see any other friends; I wish I had." In the face of his confession, in his answer to interrogatories on p. 18, he says on p. 157: "If I had the slightest idea, or would have heard before, of the failure of Joseph Dreyfus, or if Meyer would have come to me and said 'I have got these goods,' I would not have touched it, because I would have thought that he might have got these goods from Dreyfus;" yet with this knowledge, about 10 o'clock, and with his sagacity, he took no steps to stop the negotiation of his checks, or of $10,000 represented by his two unnegotiated notes, and left the City with full knowledge of the failure, the removal, and the seizures affecting his interest and the title of Meyer. On p. 142 he admits knowing the facts close on to 10 o'clock A. M. at Lehman's store, and contradicts himself when he says he saw no friends on Monday to tell him of the failure of Dreyfus, and heard nothing on Monday morning about the failure before 10 o'clock

(see p. 149), which was known to "all the world," as Weill says, on Sunday and Monday.

On p. 163, Erman says, Meyer told him "I have got that much goods stored in Mr. Meyer Weill's warehouse," and he asked no questions then or afterwards (p. 153) whence they came, or how they were paid for, as a prudent capitalist would have done in such a large transaction. Again, on p. 166, he swears, "he never dreamed of the goods coming from Mr. Dreyfus by any means," although he had just sworn, on p. 149, that after he was on his way (Monday), "it kind of struck me that he must have got it from Dreyfus;" and on p. 150, he consults a lawyer at Morgan City, without stating the facts, so as to get an intelligent reply, and he suppresses the truth so as to get improper advice about these two notes; and makes no investigation or inquiry after seeing the unreceipted invoice (p. 153) one week afterwards.

JUDGE BOARMAN'S DECISION.

Reported in 26 Fed. R., No. 11, p. 825, April 20, 1886.

Weiller and others
vs.
Dreyfus and others. } In Equity.

D. C. & L. L. Labatt, E. T. Florance, and Theard Bros., for complainants; and Singleton & Browne and M. Marks, for defendants.

The proof in this case shows that before Oct. 27th, 1883, Dreyfus lawfully owed Meyers, one of the defendants, his son-in-law, about $26,000. That Dreyfus was then insolvent and largely in debt, both of which facts were known to Meyers. That Dreyfus, on Oct. 27th, gave in payment to Meyers $20,000 worth of goods, making to him a complete delivery of the same. That said goods were stored in a warehouse

for account of Meyers, to whom the warehouse receipts were given. That Meyers, not then insolvent, made a real pledge of the goods to Erman, one of the defendants, for $15,000; $4000 in cash and his two negotiable notes for like sums, payable 60 and 90 days after date. The 60 day note was at once negotiated by Meyers, and the last one was paid by Erman at the Bank when it became due. That Erman was not at any time an interposed person to aid Dreyfus and Meyers, whatever their understandings and purposes may have been in making their transactions. That the goods, at the time they were pledged, were in the possession and ownership of Meyers, whatever may have been the rights of Dreyfus' creditors upon them; and the pledge was entered into by himself and Meyers in good faith, and for a valuable consideration. That the giving in payment by Dreyfus to Meyers was not simulated, but a real transaction.

In addition to this statement of facts, the record shows that certain suits, on the law side of this Court, were filed within the several days following the contract of pledge between Erman and Meyer. In these suits it was alleged that the transactions between Dreyfus and Meyers and Erman were simulated and in fraud of complainants, the creditors of Dreyfus. In the suit at law (Weiller vs. Dreyfus) Erman intervened, claiming the goods under the agreement of pledge. The issues growing out of Erman's intervention were tried by a jury; the Court in that case allowing only the matter of simulation or no simulation to be heard.

The Court ruled that the issue as to whether the pledge was a real one, though fraudulent, could not be heard in an action at law. On the matter of simulation the jury found for intervenor. After the trial of that issue and some days after the 90 day note had

been paid, the complainants filed this bill in equity, setting forth, as it does, that the pledge to Erman, though a real one, was in fraud of the rights of complainants, the injured creditors of Dreyfus, and prayed that the whole of the transactions between Dreyfus and Meyers and between Meyers and Erman be annulled and revoked and the goods fraudulently pledged be subjected to the claims of these complainants.

On this statement of facts, which seem to be all that is necessary for the purposes of hearing and passing upon the issues in this case, the Court some days ago entered a decree for the complainants so far as their claim against Dreyfus and Meyers were concerned, but refused any relief as against Erman. The matter as to Erman is now being heard on a motion for a new hearing.

The complainants, admitting for the sake of argument, that this statement is sustained by the proof, contend that in equity they are entitled to relief as against Erman. They contend that the suits they filed on the law side of this Court immediately after the said several transactions between Dreyfus and Meyers, and between the latter and Erman, operated in law and in equity to charge Erman with notice that he could pay the two notes only at his peril; that payment, if made by him after the petitions in those suits were served on him, as one of the parties charged therein, with aiding in the fraudulent schemes, would be against good conscience, and equitable dealing, and they say further, that notwithstanding the fact that he has or may have paid the two notes, he should be held liable to account to these complainants for the credit price of $10,000. This case, upon the facts as stated by the Court, must now be decided upon the matter of law so learnedly and earnestly presented by

the senior counsel for complainants, what effect in the way of legal notice to Erman should be given to the filing those suits at law? With what notice did the allegations in the petitions served on Erman charge him, and to what extent in law and in equity is he affected and bound by such notice?

When the issues affecting Erman's rights in and relations to the transactions which complainants now seek to avoid were tried, the Court held that an action to set aside the contract of pledge, on account of its being a mere simulation, could be tried only on the law side of this Court, that if the plaintiff sought to avoid the pledge contract as against them, because, though real, it was in fraud of Dreyfus' creditors, the suit could be heard only in equity. The ruling of the Court made then I think is sustained by authority. In the suit at law, if only the charge that the contract of pledge was a mere simulation could be tried, can it be said that he was charged with notice of anything beyond the fact that he had no right to the goods because his pledge was not a real contract but a mere simulation? The service of the petition on him was like saying to him "you must not pay those notes if your contract of pledge was in aid of the simulated transactions and schemes which we say Dreyfus entered into for the purpose of swindling his creditors, and that if you do pay them in aid of such simulated transactions, and they on the trial of these suits are proved up against you, the law will make you pay the same amounts to us." Under the doctrine of notice, contended for by complainants' counsel, can it be said in law that Erman was charged to take notice of anything beyond that which could be passed on in the court from which the notice by way of the petitions emanated? It may be said that those suits at law set up or contained two causes for

avoiding the pledge made by Meyers to Erman: *First*, that it, the pledge contract, was a mere simulation, in fraud of plaintiffs, and should be set aside. *Second*, that granting the pledge contract was a real one, it was in fraud of Dreyfus' creditors, and as to plaintiffs it should be revoked.

But it is the settled practice in this Court that only the matter of simulation or no simulation could be tried in a suit at law, and the other matter could be tried only in an equity suit; it seems to follow, as a conclusion, that the suit operated as a legal notice to Erman that he would be called on only to defend himself against the charges which could be tried and passed on in the trial of that suit. Erman knew that his contract with Meyers was not a simulation, as between himself and Meyers, and he knew, or should have known, because it is the law, that the question as to whether it was a real, though fraudulent contract of pledge, could not be inquired into in the suit pending against him on the law side of the Court; and the effect of the notice, at most, could be only to say to him that he should not pay if the contract of pledge was a mere simulation. The plaintiffs in the several suits at law chose to proceed for relief in an action at law, and the result of the trial of the only issue which could be heard in those suits was that Erman's contract was a real one, and not a simulation. After the last of the two notes had been paid by Erman, this bill in equity was filed. The complainants now pray for relief against Erman, because his contract with Meyers was not a simulation, as was contended for in the suits on the law side of the Court, but it was a real contract, which was entered into by Erman to aid Dreyfus and Meyers in their schemes to defraud Dreyfus' creditors. If the notes were now outstanding against Erman, this bill, it being admitted that the

purpose of Dreyfus in giving the goods in payment to Meyers was to defraud his creditors, might forbid Erman, except at his peril, to pay the notes, because in doing so he would be aiding in the perpetration and consummation of a fraud on these complainants.

The property pledged to Erman consisted of such movable and perishable goods as are easily and frequently interchanged in the active pursuits of commerce.

Meyers' possession and ownership of the goods, whatever may have been the rights of Dreyfus' injured creditors on them, was complete as against Dreyfus. The giving in payment to Meyers was not in itself a void contract. Dreyfus intended to give, and did give the goods to Meyers for a lawful indebtedness to the latter, and the contract, as between them, was completed when Erman became the pledgee of Meyers, and it could not be treated as a simulation by Dreyfus' creditors, even if they had had a judgment against Dreyfus, and had pursued the goods while in Meyers' possession. But when the goods went out of Meyers' possession under a *bona fide* contract with Erman, no relief in an action at law could be had against these defendants, and it would be carrying the law of notice too far to say that Erman can now be made to pay the two notes over again to any one. Motion for new hearing denied. The decree is at p. 241.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

No. 228.

FREIBURG & WORKUM

versus

JOS. DREYFUS ET AL.

D. C. LABATT,
Of Counsel for Plaintiffs.

"Non erit alia Lex Romæ, alia Athenis, alia nunc, alia posthac, sed id omnes gentes et omni tempore una Lex et sempiterna, et immortalis continebit."—CICERO.

T. H. Thomason, Printer, New Orleans.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

No. 228.

FREIBURG & WORKUM

versus

JOS. DREYFUS ET AL.

To the Honorable the Chief Justice and Associate Judges of the Supreme Court.

May it please your Honors:

With profound respect and all due deference, plaintiffs tender their prayer for a rehearing of the above cause, on the following grounds:

1st. This Honorable Court seems to have inadvertently erred in its appreciation of the Codal provisions of Louisiana law and its settled jurisprudence in relation to a "pledge" of movable property, which inexorably exacts "*an act in writing*, under private or public signature of pledgor and pledgee, containing reciprocal obligations, stating: 1st. Amount of the debt secured by the pledge; 2d. The species and nature of the thing given in pledge; and, 3d. "A state-

ment annexed thereto of its number, weight and measure, all of which must not be supported by parole testimony." *18 Duranton, "Nautissement," Arts. 518, 521; 1 Biret, 428; 32 An. 586; 14 An. 375; 15 An. 165; 96 U. S. 487; 22 An. 107; 6 An. 517; 23 An. La. R. 478.* Appellee's asserted pledge utterly fails to fulfil these essential requirements, and rests admittedly alone on L. Meyer's three notes containing a printed memorandum *referring* to a pledge which is not produced, applicable only to "negotiable securities" requiring no written act of pledge. Hence, the very words, "securities and transfer," found therein, do not relate to "whiskey and cigars" pledged in the instant case, but these are embraced in the 2d paragraph of Article 3158, as movables, which can only be pledged by act in writing. The words "act in writing" in our Civil Law are used to exclude oral testimony.

Tested by the textual provisions of Art. 3158, even if Ermann's pledge had been reduced to writing and made in good faith, it was fatally defective because no statement was annexed giving "quantity," "quality," "weight" and "measure," which are requisites equally essential to validity as "mention of debt," "existence in writing," or "good faith."

Plaintiffs refer to their original brief, pp. 8 to 17, for a review of our State jurisprudence, which is not even seriously disputed by our learned adversaries. Our Supreme Court say, in 32 An. 588:

"Defendant does not pretend to hold anything in the shape of a written pledge, but relies exclusively upon his four promissory notes and his attempted verbal explanation, evidently losing sight of our jurisprudence which has long settled that privileges are of strict right, and parties claiming under them must conform to the requirements of the law. It is required, in order to create a pledge, that the intention of the parties be reduced to writing; that the nature and amount of the debt to be secured be stated; that the object or objects or things pledged be described, so as easily to be identified; that actual (or constructive) delivery should accompany the act, when under private signature, and the instrument (*i. e.* the act) should exhibit *the nature and extent of the rights and obligations of the contracting parties reciprocally.*" DeBlois vs. Reiss, 32 An. 586.

Thus your Honors see that our Civil law, unlike the Common law, requires a separate, distinct and independent commutative contract to exist *in writing outside* of the obligation it is intended to secure; in other words, you must look into the act of pledge, to ascertain all the essential facts and see what obligation or debt it is intended to secure, but you are never to look into the obligation or promissory note to find the ingredients of the pledge, such as the accompanying statement of nature, quality, number, weight and measure of the goods pledged. The warehouse receipts only dispense by symbolic delivery with the

actual delivery mentioned in the Article cited, but cannot and does not supply the necessary identification provided for to prevent fraud and abuse. This decisive utterance of our present Supreme Court has not been considered maturely by your Honors, or, at least, it has not been cited in the opinion and perhaps was overlooked by the Court.

The case from 15 An. 165, is cited approvingly therein, which your Honors cite to support an unwritten pledge, or one established by parole, a construction rejected by our Supreme Court. The facts presented in that case are singularly identical with those asserted by Ermann, but Renshaw failed to establish a pledge in writing by his warehouse receipts and check for the amount, in the absence of a written stipulation.

2d. The decision of this Honorable Court, with due deference seems to be in direct violation of Art. 3142, R. C. C., which provides, that "any pledge of property by one whose *ownership may be divested*, cannot confer on the pledgee any further right than he had himself." 2 La. 511, 518; 2 Mason, 239. The revocatory action of Louisiana is the "Lex Pauliana" of the Roman Law, and corresponds to the ancillary or dependent Bill in Chancery. It can reach the property in the possession of any defendant whose author's title is defeasible, whether in good or bad faith. The opinion pronounced concedes and decides, that Meyers title was voidable, and the decree actually avoids it, which is tantamount to declaring that the

property was Dreyfus' and not Meyer's when it was pledged to Ermann. R. C. C. Art. 3143 says, "to know whether the thing pledged belonged to the debtor (*i. e.* Meyer), reference must be had to the time when the pawn was made." (Orig. Brief, p. 16).

At the time of making Ermann's asserted pledge, Meyer, in consequence of the delivery to him by Dreyfus of the goods as a "*dation en paiement*," had only the legal title, which was all he could pledge or transfer; but the equitable ownership asserted by plaintiffs in the ancillary Bill or revocatory action, was in Dreyfus, and the avoidance of the legal title removed the cloud and denuded Meyer of all right to pledge it as owner to the prejudice of third parties, complaining in Equity. It was on account of the "*Livraison reele*," or real delivery (see Art. 3125, Code 1825) of the goods, that demanded the "revocatory action" in the Federal Court, and not because the pledge was *real*. The Civil law never applies the words "real or unreal" to a pledge. It is either "a pledge or it is not." As explained in the original brief, p. 23, it is considered a *real* delivery when possession of movables is open, continuous and uninterrupted, and regulates the right of creditors, in disregarding or not the necessity for the revocatory action or one "*en declaration de simulation*," which injures the creditor. In other words, where no *real* delivery is perfected you may seize at once, without recourse to the revocatory action, to set aside the conveyance for fraud, but

where a *real* delivery is asserted, the party in possession as owner or pledgee is not to be divested, until after judgment in a direct action. See authorities on p. 23, original brief, and especially 33 An. 333.

We, therefore, submit that the opinion holds that the property when pledged belonged to Dreyfus, our debtor, and not to Meyer, through whom Ermann claims title as pledgor, and true substantial justice clearly demands a reversal, and not an affirmance of the decree against Ermann, with all due respect.

This Honorable Court concedes that Meyer's title was voidable and it must logically follow that Art. 3142, R. C. C. should be decisive of the case in plaintiffs' favor, otherwise the anomaly is presented that a man can give to another a better title than he himself has, in contravention of the axiomatic principles of the Civil and Common law "*nemo plus alius transferre, etc.*, and *non dat qui non habet.*" See 11 L. R. 529. Whatever title Meyer had was pledged to Ermann but "*cum onere.*" It is elementary that the sale or pledge of another's property is null and void and *a fortiori* much more so when it is a part of a conspiracy or fraud to hinder and delay honest creditors, to screen property from pursuit or to place it beyond their reach by fraudulent sales or defective pledges, so completely established by the defendants' own witnesses.

3d. Plaintiffs submit that the Court errs in holding that Ermann parted with the $15,000 *in good faith,* so far as the two notes of $5000 each are con-

cerned, which he paid, with full knowledge of Meyer's voidable title and after he had complained to him of the "scrape or trouble "(Trans. p. 150) he, Meyer, had got him into, and that this deliberate imprudence violated the golden rule embodied in Art. 1960, R. C. C., which lies at the foundation of Equity Jurisprudence, viz: "No one should enrich himself at the expense of another or do unto others what he would not wish done unto him." It was his duty to have withheld payment of these $10,000, the notes for which were never negotiated and diminished thereby the probable loss to honest creditors. Ermann's liability to payment over again is the result of his culpable indifference and lack of ordinary prudence and not attributable to plaintiffs' laches or lack of warning in time to have prevented the loss. Ermann deliberately took the risk that Meyer's questionable title was absolute and could not be divested, and it seems illogical, that when Meyer's legal title yields to the equitable title of Dreyfus, he can hold the property of Dreyfus under a pledge from Dreyfus' fraudulent vendee, as a *quasi bona fide* purchaser, *i. e.* pledgee from the latter. The enlightened jurisprudence of this and other courts have held differently. See authorities, original brief, pp. 40, 41 to 45; 2d vol., ch. Kent, p. 532 (4th ed.) *Ermann had full notice.* See p. 24, original brief.

4th. Your Honors say, "that notwithstanding Meyer's title was voidable, until so set aside, the title

being in Meyer, he could create a valid pledge in favor of a *bona fide* party." This may be the rule under the common law, but it is expressly otherwise provided by Art. 3142, R. C. C., which says, "*any pledge of property, by one whose ownership may be divested, cannot confer on the pledgee any further right than he had himself.*" As this question depends on the local jurisprudence of the State of Louisiana, interpreted by its highest tribunals, and not on Common law, it is submitted that the decree pronounced is an apparent departure from the settled custom of this Court in dealing with contestations from Louisiana and Statute laws of other States, with due deference and respect. This Honorable Court has always carefully respected and enforced the Civil law of Louisiana in conformity with the settled jurisprudence of its highest tribunals, unless controlled by federal jurisprudence, or its organic or congressional legislation, and has always endeavored to harmonize its opinions by that standard.

This Honorable Court, erroneously, we think, regards Ermann as an innocent third party, notwithstanding the Record teems with abundant evidence of his knowledge of and complicity in the fraud and failure of Dreyfus and Meyer in whose house he was an inmate at the time of the explosion of their commercial and social honor, and which was known to "all the world," before the intended pledge was concocted on Monday, 28th October, 1883. 36 An. 842.

5th. The law of Louisiana and numerous decisions,

recognize two kinds of pledge, one permitting negotiable instruments, stocks, bonds and money, obligations, etc., to be pledged by mere delivery and without any written act, the other pledge is of all other movable property with the express provision that the pledge must be evidenced by an "act" in writing, public or private, containing certain ingredients, without which it confers no privilege against third parties, *whether in good or bad faith.* These essential ingredients are: 1st. It must be an "act in writing," signed by the contracting parties and with reciprocal obligations. 2d. It must state the amount of the debt, it is intended to secure. 3d. The species and nature of the thing given in pledge. 4th. "A statement annexed to the pledge of the number, weight and measure, quality and quantity, and lastly this act must accompany actual or constructive delivery by warehouse receipts. These requisites being sacramental and not formalities to constitute a valid pledge against third parties, whether in good or bad faith. R. C. C. 3158; 14 An. 375; 15 An. 165; 6 An. 517; 32 An. 586; 1st Biret, 428, and 18 Duranton Nautisement, 518 and 521. It is incontestible that the property claimed by Ermann falls within the second class, and he presents no written act whatever containing these essentials, and relies entirely on being within the first-class of pledges, which refers only to negotiable securities, that may be pledged by mere de-

livery requiring no written act to confer a privilege. See 32 An. 586, and numerous authorities in brief.

Cater vs. Merrill is not an authority for, but clearly against the pretensions of Ermann. It decides that the specifications in 2d paragraph of Art. 3158 are *essentials* and not *formalities*. It decides that although Eager held an instrument or "*act in writing*," was in good faith and parted with his money, yet as no debt was mentioned to support the pledge, it was fatal. In the instant case, even if the three separate notes of $5000 each supply or establish the amount of the debt, still there is no written independent instrument of pledge, as in the Cater case, to support the claim of a privilege. The printed memorandum relied on for that purpose is and should be regarded as a stipulation applicable only to public securities like stocks, notes, bonds, etc., and not to the pledge of other movable property like whiskey and segars. This is clear from the words "*Securities*, *Transfer* and *Margins* kept up," applicable to daily fluctuations of a stock exchange, pledged under the 1st paragraph of Art. 3158, and not to articles having staple values in commerce. This stipulation is to fix the time when the capitalist might protect himself or his customer against loss, and should not be confounded with the "reciprocal obligations" and stipulations in the "act of pledge" required by the 2d paragraph of the Code and the authorities cited. Even Judge Merrick, who dissented in the Cater case, urged that a *separate instrument*

"was essential to secure the amount of promissory notes," in framing a pledge, without mention of the debt. See 14 An. p. 380. This is the proposition for which plaintiffs contend: "Where parties have woven a web of fraud, it is no part of the duty of courts of justice to unravel the threads so as to separate the sound from the unsound."

A re-examination of the vital question, as to existence of an act in writing constituting a pledge, will show nothing more than an intention to pledge, and a *reference* to an unexecuted pledge, precisely within the rule laid down by Justice Bradley in Cavaroc vs. Casey, that an "attempt or agreement to pledge confers no privilege."

6th. The warehouse receipts do not supply the prescribed statement as to quantity, quality, weight or measure, and simply dispense with actual delivery which was essential under the ancient jurisprudence in France and Louisiana. They do not supply "the reciprocal obligations signed by the contracting parties." The three notes are signed by Meyer alone, and the pretended pledge he *refers* to in his obligations is not the "act in writing" prescribed by the Civil Code, as interpreted by the unform decisions of our Supreme Court from its earliest creation. This solemnity is as indispensable as the requirements for an act of sale or mortgage of real estate.

A note stipulating that it is *secured* by mortgage, confers no lien unless supported by an independent

and separate act, under our jurisprudence. O. C. C. 3272; R. C. C. 3305; 7 Wall. 650.

7th. Plaintiffs submit that the evidence establishes the insolvency, fraud and conspiracy of Dreyfus and Meyer, and the actions, intimacy, conduct and testimony of Ermann abundantly show he was fully cognizant therewith and lent himself to them to aid and perfect the scheme of Dreyfus to cover up his property and screen it from his honest creditors, or to confer preferences upon his son-in-law, Meyer, in violation of their common pledge. That the notes, the invoice, the warehouse receipts and the checks were undoubtedly antedated, so as to appear to have been made an hour or two before the seizures of Weiller, Hoffheimer, plaintiffs, Dubois and others on the 29th and 30th October, 1883. This is the only way to reconcile the extraordinary conflict of testimony of Weil and Meyer, the prolonged delay in collecting the checks three to five days after they were dated, the failure to assert own ownership by Meyer, and the ignorance of Weill as to whose goods were in his store, the delay of eight days before Ermann asserts his pledge, and other gross falsehoods pointed out in argument and brief.

It would be a grievous condition of litigation if this Honorable Court should embrace and perpetuate a rule of construction in conflict with the textual provisions of the Civil Code and the jurisprudence of the Supreme Court of the State. It would establish two

different modes of construction of identical mercantile contracts within the same judicial territory. "*Misera est servitus, ubi jus est aut vagum, aut incertum, aut incognitum.*" There should not be one law at Athens and another at Rome, if it can be avoided.

We appreciate the reluctance with which this august Court of last resort looks back on opinions once pronounced against litigants who seek to avert their finality, or to dispute the principles on which they are based; but as we are not all infallible, we trust that our application will not be deemed the result of captious dissent, but made in all conscientious sincerity as an officer of this illustrious tribunal, upon a question peculiar to the jurisprudence of our Civil law, perhaps not so clearly presented at the trial, as it should have been.

Plaintiffs confidently rely upon these pivotal points when reconsidered by your Honors in the light of our special and peculiar jurisprudence to obtain a rehearing and reargument of this important case.

Respectfully submitted,

D. C. LABATT,

Of Counsel for Plaintiffs.

Office Supreme Court U. S.
FILED,
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 228.

J. FREIBURG ET AL.

versus

J. DREYFUS ET AL.

PLAINTIFF'S SUPPLEMENTAL BRIEF IN REPLY.

T. H. Thomason, Printer, New Orleans.

SUPREME COURT OF THE UNITED STATES.

No. 228.

J. FREIBURG ET AL.

versus

J. DREYFUS ET AL.

PLAINTIFF'S SUPPLEMENTAL BRIEF IN REPLY.

Certain inaccuracies, imbedded in illogical conclusions, impose upon plaintiff a short reply to appellee's brief. On page 3 he asserts that the 2d November was the date of filing plaintiff's petition, whereas it was on the *30th October*, because our practice permits conservative process to issue 24 hours before filing petition. Again, the brief indicates by its caption that Joseph Dreyfus, Lehman Meyer and A. Ermann, are all appellees, whereas the Record discloses that the decree appealed from is final and irrevocable in plaintiff's favor against the two first named, and is only appealed from as to Ermann, who is sole appellee. Now, when appellee, not plaintiff, as recklessly stated on page 12, on April 7, 1886, insisted on a judgment

at law, after a decree in equity, adjusting every issue involved and not suspended by a *supersedeas* bond, he was not only violating order of Court originally entered to suspend proceedings until the equity case was concluded, but was utterly unmindful that there was any "hereafter" or a Supreme Court that administers substantial justice. In the face of the fact that two years before he had bonded the 29 barrels of whisky sequestered, had sold them, p. 153, and accounted for the proceeds before the Master more than a month before, he seeks a judgment directing plaintiff to deliver to him these 29 barrels of whisky which were delivered to him in 1884 (p. 68), and represented by intervenor's bond which has never been cancelled, and is in force to this day. No waiver of a jury by plaintiff abridged the status of the litigation, the rights of parties, or rescinded the order of court which remitted the issues to the equity side, to abide a final result, only to be concluded by this appeal.

The judgment of 7th April was *brutum fulmen*, impossible to execute, irregular, because the whole case should have been fixed and tried, if tried at all, as our practice directs, and was mere surplusage, taken in violation of an unrescinded order of court, staying proceedings until the equity suit should be *concluded*, not "*disposed of*," as in appellee's motion on p. 64, Trans. Plaintiff's waiver of a jury was a mere courtesy to counsel and court for one particular purpose only, and hath this "extent, no more." It would be a novel

view of administering "substantial and impartial justice," as intended by the doctrines of Krippendorff vs. Hyde, to say it was an acquiescence or waiver of the sacred right of appeal in equity, or a writ of error, in the suit at law.

The circumstances which bring us here, attest the non-conclusion of the equity suit, and expose appellee's fallacies on that point. Appellee insists that because 46 days elapsed before our appeal, it was an acquiescence in the finality of the decree, to which we reply that the statute allows us 2 years to deliberate and determine this privilege. In this case it was promptly exercised, considering the absence of plaintiffs in Ohio, proper consideration of their legal rights before incurring enormous costs of appeal and time to procure a proper bond, on the 12th April, 1886, only 5 days after appellee presumed to represent the equity suit as concluded or disposed of. Appellee's able counsel submits no authority to support this novel proposition, because there is none.

Another inaccuracy on p. 12, defendant's brief, which says: "It was of their own accord, by their own agreement, that the case on the law side was taken up and tried without a jury." With due deference, this reckless assertion is unsupported by the record and improbable. What interest had plaintiff, who was preparing to appeal, to try the case on the law side 47 days after the decree in equity was rendered against him, which he was preparing to ap-

peal from, and did so 5 days after? Especially in the face of his protest before the master (Supp. Trans. p. 3).

It is inconceivable, preposterous and absurd to say it, "was of their own accord," etc., and the motion on p. 64, in Jacoby vs. Dreyfus, shows whose interest it seemed to be, although no such motion is found in the record as to that of plaintiff's case at law, fixing it for trial.

We submit that nothing done by counsel, Court or jury at law, after the decree in equity, can interfere with the right of appeal and reversal. If reversed, defendant will be obliged to disgorge the proceeds of property, over which he had no pledge in writing, possession thereof, having been obtained through fraud, and held by falsehood. In that event there will be no necessity to annul this judgment at law, to obtain an execution of the decree of this Honorable Court. *Ex necessitate* the judgment at law would be "*coram non judice.*" (See Transcript, p. 153, and Supplemental Transcript, indorsed.) It is true, that no judgment at law has yet been rendered in the case No. 10,378, but the proof of indebtedness was sufficiently exhibited in equity to obtain a final judgment which was never appealed from. Indeed, the pleadings show plaintiff's debt was undisputed, defendant Dreyfus only pleading it was premature, having become due on 2d November, 1883, a few days after suit was brought (see Trans. p. 76). This exception was considered an answer and treated as

a confession of the debt by Judge Boarman. We submit that the right of appeal will not be taken away or destroyed by such a flimsy inference, as the waiver of a jury trial, which could not be successfully resisted on legal grounds, so long as an appeal will lie to reverse a decree, be it suspensive or devolutive, as we say in the civil law, because "*nemo facile presumitur donare.*" As in Kripendorff vs. Hyde, 110 U. S. 285, and that class of cases, plaintiff's bill "is altogether ancillary to the principal action at law, in which the attachment issued, and should be regarded as merely a petition in that cause, or dependent upon it, and connected with it as a petition *pro interesse suo*, or of intervention in an equity suit or admiralty suit, asserting a claim to property or fund in Court, the subject of the litigation which, owing to the peculiar relations between the Courts of the States of the United States, is a necessary resort to prevent a failure of justice, and furnishes in such cases a certain, adequate and complete remedy against injurious abuses of the process of the Court by supplying a means in the principal suit of trying the title to property in the custody of the law." And on p. 287: "In whatever form, however, the remedy is administered, whether according to a procedure in equity or at law, the right of parties will be preserved and protected against judicial error, and the final decree or judgment will be reviewable by appeal or writ of error, according to the nature of the case."

Now, the "right of property" was decided in the equity case and could not be decided on the law side and to correct and protect against judicial error, plaintiff's right of appeal seems indisputable.

Defendant's first proposition insists that the Court at law disposed of the question as to the "form" of the alleged pledge, and is not now open to discussion. We dispute this, because our pleadings alleged that there was no pledge in any "form," and if there were, it was fraudulent and simulated, and intervenor's objection to jurisdiction pretermitted this issue to the equity side of the Court in the Weiller case, and the further proceedings were to await the ultimate conclusion in Chancery. If the Court at law ever passed on the "form" of a pledge that does not exist in writing, it was a "judicial error," recognizing a shadow for substance, to be corrected by this appeal upon the Record.

The 2d proposition is destitute of merit, because it is asserted, that a waiver of a jury is a waiver of appeal or acquiescence in a judgment, which the Court had no right to render, before the conclusion of the equity suit. *Ex nihil, nihil fit.*

To the 3d proposition, we reply, that intervenor and appellee cannot dispute the presumption, that ample evidence of the undisputed indebtedness was before the Chancellor. He is not the champion of Dreyfus and Meyer, who have never appealed or disputed the debt, but, on the contrary, confessed it by the excep-

tion of prematurity only. Besides, full proof was made on 18th February, 1884; but as counsel for Dreyfus repudiated his associate and partner's waiver of a jury, the case was opened and still pends, and the judgment in Chancery rendered it idle to increase the costs of transcript by the offer of cumulative and irrelevant testimony. The debt of plaintiff being undisputed, was within the case of 17 Wallace, 521.

The appellee calls attention to the decree, which gives judgment *in solido* against Meyer and Dreyfus for $18,901.40, with legal interest, *as set forth in the judgment at law, with costs*, and adds, "that no such judgment at law appears of record on the law side."

It is evident that the Judge below had before him and referred to the judgment of 18th February, modified by a more accurate statement of the exact liability, and was not concerned to investigate whether it had been opened or not. At any rate, it is *de minimis*, and confirms plaintiff's analysis of the absence of familiarity with the pleadings in the cause, which misled the learned Judge below to render the decree complained of.

The 4th proposition involves the sole issue in the cause: Ermann's innocence!! It is urged that their "answers are evidence against plaintiffs, to be overcome by two witnesses, or one witness with corroborating circumstances." This is perhaps true; but how is it when those answers are shown to be false out of the mouths of those witnesses themselves? How is it

when they swear to facts improbable or impossible to be believed, establishing the fraud complained of?

The defendant's brief, at p. 17, says: "One very patent fact in support of the good faith of Ermann is, that when he learned by telegraph that the goods pledged to him had been seized, he hired a *locomotive*, for which he paid $150, and came back to New Orleans as fast as steam could move him." We are obliged to defendant's counsel for the assertion that his client paid $1.50 per mile for a *locomotive*, on hearing "that the goods pledged to him were seized;" and we ask, how this fact could have been the cause of his swift and expensive trip, when he swears on p. 18: "I first heard that the goods pledged to me were the same goods which had been removed from Dreyfus' store on Sunday, the preceding day, between 9 and 10 o'clock, and there was a great deal of talk about it during Monday." Yet, with this knowledge, he takes the 12 o'clock car for Morgan City, to be informed of what he must have known, to-wit., the seizure of those identical goods by the Marshal on Monday morning before 11 o'clock, A. M., by town-talk and the newspapers. The telegram was sent on Tuesday the 30th, or Wednesday the 31st, to "come down immediately, something serious." Now, this did not refer to the seizures, because they were made on the 29th, two or three days before, and Ermann would have been notified much earlier than Wednesday the 31st, if he had not known this fact when he left; but this dispatch re-

ferred to the failure of Dreyfus to settle with his creditors at 40 cents, 12, 18 and 24 months, on the dollar (Wm. Stern's testimony, p. 39), and it became necessary to concoct a pretended pledge to him, and to antedate it so that it would outflank the seizures by one-half or an hour's time. If Ermann had had the pledge on Monday morning on the goods he heard at 10 o'clock had been removed from Dreyfus' store, is it credible he would have left the City, utterly unconcerned, to go back home and wait to be summoned to New Orleans, by news of seizures two days old and published as sensational and current information, a fact well known to him on Monday?

Weill, on page 215, swears that he believes it was on Monday (29th), the next day after the receipt was given, and Ermann said "these goods I have loaned money on." See also p. 222. If this occurred, it must have been after the seizure, because Weill swears, p. 222, "I believe it was on Monday afterwards," and he told him to get a lawyer, and recommended Singleton & Browne. Again, p. 222, he reiterates it as on Monday Ermann knew of the seizures. "He knew they were seized, without telling him." In the face of this testimony from their own witnesses, your Honors cannot believe he came to town on a locomotive because he learned by telegraph for the first time what he is proven to have known two or three days before his flying trip. Where have appellants fallen into error, when your own witness testifies to the seizures on

29th, 30th and 31st, before Singleton & Browne were retained by appellee? How can it be reconciled with human nature, that Ermann had a valid pledge on Monday morning for $15,000, and with knowledge of the seizures of the goods pledged should not have stopped his checks or the negotiation of his notes, especially as they were not presented or paid at the banks for four or five days after it is pretended they were dated? See Trans. p. 134, check paid November 3d, 1883, and November 1st, 1883, and one of the notes never negotiated. Ermann was in ample time to stop payment of his checks, even after his flying trip of October 31st, which he pretends first told him of the seizures. Any effort to do so would have been successful; but none were taken.

Now, take Meyer's testimony on p. 183, where he swears he paid Ermann on Monday morning, at his store, $375 in cash, "after I got the money on these warehouse receipts," and test his truth and veracity by the fact that the checks were not paid by the bank till November 1st and 3d, and one of these notes was never negotiated and the other was collected by a payee, who did not protest it but held it till the 29th January, 1884, due 2d January. As to the check for $2500 on State National Bank, it was paid November 1st, 1883, to L. Meyer, and it could not have been true that he paid the $375 to Ermann "after he got the money on these warehouse receipts" on October 29th. As to the other check, it was negotiated about

the 2d November, and paid the 3d, as merchants do not fail to use, or present, or deposit for collection checks five days after they are payable, p. 134. How can appellee explain, that notwithstanding his *locomotive* haste to reach town on Tuesday or Wednesday, 30th and 31st, to protect his pledge, it was five or six days after, before he appeared in Court to assert it, *i. e.*, November 6th? See Trans. p. 122. Defendant says the Court is asked to presume that the checks were not used, nor the notes, prior to Ermann's learning that these pledged goods came from Dreyfus' store. Plaintiffs make no such request, they only say the record and the facts show Ermann was in ample time, if the business were an honest one, to have annulled the transaction, stopped his checks and the negotiation or payment of his two notes, and averted possible loss to honest creditors, and that his failure to do either, while there was ample time, speaks trumpet-tongued against his assumed "innocence," and establishes culpable imprudence amounting to fraud in equity. Meyer, who was so "pinched for money," would not have kept in his pocket the check for $2500, collected in person on 1st November, dated October 29th, at least three days' old, if it had really existed the day it is dated, and would not have sworn he collected the checks on Monday, 29th, before Ermann left town, if he had remembered that the check showed it was paid to him two days afterwards on his endorsement.

To conclude, defendant's counsel does not contest plaintiff's statement that our law requires a contract of pledge to be *in writing*, under the Civil Code, but rests his client's case entirely on a "printed clause" in 3 promissory notes, referring to the existence of a pledge, which is not produced or its absence accounted for, supported only by illegal oral testimony. The signature of L. Meyer, as payee, and A. Ermann, as endorser, cannot be evolved to create the mutual contract in writing, with reciprocal obligations, and containing the essential ingredients required to establish a valid pledge as against third persons.

All which is respectfully submitted.

H. Labatt

MAR 28 1890
JAMES H. MCKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 228.

JULIUS FREIBURG ET ALS., APPELLANTS,

versus

JOSEPH DREYFUS, LEHMAN MEYER AND ABRAHAM ERMANN, APPELLEES.

BRIEF ON BEHALF OF A. ERMANN, APPELLEE.

R. H. BROWNE,
C. B. SINGLETON,
Solicitors for A. Ermann.

T. H. Thomason, Printer, New Orleans.

SUPREME COURT OF THE UNITED STATES.

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JOSEPH DREYFUS, LEHMAN MEYER AND ABRAHAM ERMANN, APPELLEES.

BRIEF ON BEHALF OF A. ERMANN, APPELLEE.

In order that the Court may fully understand the matters involved in this cause, *a full statement of the pleadings*, between the same parties, *on the Law side of the Court*, is necessary, because the bill filed herein is, and is declared to be, "ancillary and dependent and "intended to aid" appellants' "suit at law, and to re- "move clouds upon said property placed thereon by "the fraud and collusion of the defendants, and to "promote substantial justice."

On the 31st October, 1883, Freiburg & Workum, of Ohio, filed a petition on the Law side of the Circuit Court

of the United States, for the Eastern District of Louisiana, wherein they alleged that Joseph Dreyfus, of New Orleans, was indebted to them in the sum of $19,000, with 5 per cent. interest from judicial demand, and further alleging, that as vendors they had a lien on certain whisky and liquors, still in Dreyfus' possession, and asked that it might be sequestered. Tr. pp. 65, 66.

The writ was issued, and the marshal seized and took into his possession, as the property of Joseph Dreyfus, 29 barrels of whisky (not in Dreyfus' store, but) in the warehouse of Meyer Weill & Co., No. 34 Decatur street, New Orleans. Tr. p. 68.

On the 6th of November, 1883, Abraham Ermann, appellee herein, filed in said suit, what is known under the Louisiana Code of Practice as a *petition of intervention and third opposition*, wherein and whereby he set forth, that on the 29th October, 1883, he advanced and loaned to one, Lehman Meyer, $15,000, evidenced by three notes of Meyer, each for $5000, and that said Meyer "by a clause in each of said notes, and the endorsements of certain warehouse receipts (five in number), and delivery of the same" to him, "pledged the said 29 barrels of whisky with a quantity of other goods and merchandise" to him.

That the advances, notes and pledge were "made in good faith and prior to the seizure."

That under the law, he (Ermann) was entitled to bond the whisky, and prayed, that "he be declared

" the lawful pledgee of the 29 barrels of whisky, that " it might be delivered to him as such, and that the " writ of sequestration be dissolved." Tr. p. 70; Warehouse Receipts, Tr. pp. 13, 26.

On the 13th November, 1883, Freiburg & Workum filed their answer to Ermann's petition of intervention and third opposition, wherein they substantially averred the matters set forth in their Bill filed subsequently, to-wit., March 14th, 1884.

They specially denied in this answer, that Ermann held "*any valid act of pledge*," and alleged "that the warehouse receipts and pledge were null, void and similated."

That Ermann was not "a pledgee in good faith or an innocent third party," and concluded with the prayer that " the pretended pledge be declared simulated, " null and void, and for judgment with lien and privi- " lege on the property sequestered. Tr. pp. 74, 76.

Dreyfus did not answer, and on the 18th February, 1884, a judgment was rendered against him in favor of Freiburg & Workum, for $19,000 with 5 per cent. interest, from the 2d November, 1883, the date on which the petition appears to have been filed. Tr. pp. 76, 77.

Which judgment was set aside on the 17th March, 1884, on motion of their counsel (Tr. p. 78), and no judgment appears in this record to have been taken against Dreyfus thereafter at all.

On the trial of the petition of intervention and third opposition of A. Ermann, after Ermann had intro-

duced evidence to show that the transfer and pledge to him by Meyer of the goods in question were real and not simulated, his counsel objected to the introduction of evidence tending to prove that the transfer of the goods and pledge were fraudulent and collusive, on the ground that the issue as to the fraudulent and collusive nature of said transfer and pledge, could not be tried or inquired into in said proceedings, *and that a direct action* was necessary *to declare their nullity*, which objection the Court sustained, and excluded the testimony on the further ground, that the Circuit Court sitting as a Court of Law was incompetent to pass upon the question of fraud and collusion. See Tr. p. 30. Supplemental Bill. Weiller et al. vs. Dreyfus.

In the meantime, a Bill had been filed on the Equity side (March 14, 1884) in aid of the suit at Law, and "as ancillary" thereto. Tr. pp. 4 and 28-31.

And the Court on the *Law side* ordered "that the cause stand adjourned until the cause on the Equity side of this Court can be concluded." See Supplemental Tr. p. 1.

The Equity cause was proceeded with, and argued and submitted on the 2d and 3d December, 1885, and a decree rendered on the 20th February, 1886, recognizing the validity of the pledges to Ermann, and that he was in good faith. Tr. pp. 241-2. And on the 7th April, 1886, nearly two months after the decree on the Equity side had been rendered, and be-

fore any appeal in the Equity cause had been asked for or granted, and the appeal was taken. Tr. p.

This Court will find (Tr. pp. 78-79) the following proceedings on the Law side of the Circuit Court in the law case, which had been "adjourned until the cause on the Equity side can be concluded." (See Supplemental Tr. p. 1).

Freiburg & Workum
vs.
Joseph Dreyfus.

No. 10,378.
U. S. Circuit Court.

" The parties having filed a stipulation waiving the " intervention of a jury, and submitted the cause to " the Court upon the issues of fact as well as of law, and " the Court having considered the evidence, and being " fully advised in the premises," rendered a judgment, and decreed that Ermann was "the lawful pledgee of the 29 barrels of whisky," ordered it to be delivered to him, and dissolved Freiburg & Workum's writ of sequestration, with costs. Trans. pp. 78 and 79.

Analysis of the Equity Pleadings.

1. Plaintiffs alleged that they had instituted a suit at Law (No. 10,378), against Joseph Dreyfus for $19,000.

That they had *sequestered 29 barrels of whisky*, on which they claimed the vendor's lien—that Dreyfus was insolvent, and fraudulently removing and concealing large quantities of his goods in the night time.

That A. Ermann, in said Law suit, sets up a pre-

tended pledge, made to him by Lehman Meyer, a pretended vendee of Dreyfus, and that both are fraudulent, illegal and unjust.

2. That Lehman Meyer's purchase of said goods from Dreyfus was with knowledge of Dreyfus' insolvency, and, therefore, fraudulent, null and void.

3. That Meyer, after this pretended and fraudulent sale, pretended to pledge these goods to Abraham Ermann for $15,000, which was fraudulent and void, as both ~~Lehman~~ and Meyer knew of Dreyfus' insolvency, and that Erman lent himself *mala fide* to carry out the scheme and collusion of Dreyfus and Meyer.

4. That the delivery of *said whisky* to Meyer by Dreyfus was surreptitious, and to effect a fraud, and did not destroy Dreyfus' title or possession, and that the pretended sale and pledge were a cloud upon Dreyfus' title.

5. That all the acts, doings and pretenses of the defendants were illegal, fraudulent, null and void; that Meyer could not transfer any better title than he had, and that the source of Ermann's title was corrupt.

6. That the defendants fraudulently and collusively combined to make said fraudulent and illegal sale and pledge, in order to screen said merchandise from Dreyfus' creditors.

7. That Dreyfus is and was hopelessly insolvent, and if said fraud was consummated, the plaintiffs were remediless, and that they had no remedy at Law, and that "*the Bill in Equity is ancillary and dependent*

" *and intended to aid your orators' suit at Law, and re-*
" *moved the cloud upon said property placed thereon* by
" the fraud and collusion of the defendants." (Italics ours).

Then follows a prayer for an injunction to prevent the sale of the property—and the defendants were required to answer under oath certain interrogatories propounded to A. Ermann and Lehman Meyer. And that the transfer, sale and pledge, be declared null and void and of no effect, as being a fraudulent preference given to one creditor over another, and prohibited by the laws of Louisiana. Tr. pp. 1-6.

To this Bill a demurrer was filed, Tr. pp. 9 and 10, and overruled. Thereupon, Ermann and Meyer answered under oath, fully, explicitly and completely, denying all knowledge of Dreyfus' insolvency, fraud or collusion, and answered the interrogatories under oath, categorically and fully. Tr. pp. 12-18 and 18-26.

After a great deal of testimony was taken, the case was argued before Judge Boarman, of the Western District of Louisiana (in Judge Billings' absence from the Circuit) and on the 20th February, 1886, he rendered a decree, wherein he held: that the sale from Dreyfus to Meyer on the 29th October, 1883, should be annulled—the sale, though real and accompanied with delivery, being in fraud of creditors—the consideration being the payment of an antecedent debt, and Dreyfus being insolvent to Meyer's knowledge.

That Dreyfus and Meyer were indebted in solido to

Freiburg & Workum for the sum of $18,901.40, with legal interest, as set forth in the judgment at law. (Italics ours).

That the pledge by Meyer to Ermann for $15,000 was valid—Ermann being a pledgee for value, *bona fide*, and without notice of the fraud between Dreyfus and Meyer, and maintained the pledge.

And then the Court referred the matter to J. W. Gurley, Master, to ascertain whether the pledgee had sold the goods,—and if sold, for how much—and whether he had sold them to the best advantage—and what amount he had realized therefrom—whether sufficient to pay him the amount due him, etc. Tr. pp. 241-242.

This report will be found in the supplemental record, and shows that Ermann had realized net to be applied to his pledge, $13,066.25. Supplemental Tr. pp. 2 and 3.

ARGUMENT.

The *first* proposition we submit to the Court is, that the validity of the pledge from L. Meyer to A. Ermann, so far as the form is concerned, is not open to discussion.

Our reason for this, is, that the issue of the validity of the pledge as to form, was squarely presented in the suit on the Law side of the Court in Freiburg & Workum vs. Joseph Dreyfus, A. Ermann, intervenor and third opponent, see Tr. pp. 70, 74; that it was a court

of competent jurisdiction to try that issue, and was legally seized of jurisdiction. That when the order was made (Sup. Tr. p. 1) that "the cause stand ad- "journed until the cause on the Equity side of the "Court can be concluded," proceedings therein were merely suspended and the jurisdiction was not disturbed.

That when the decree in the Equity cause was rendered on the 20th February, 1886 (Tr. pp. 240, 241), and nearly two months after the rendition of that decree (April 7, 1886), and no appeal having been asked for or allowed therefrom, the intervenor and third opponent, A. Ermann (appellee and defendant herein), moved to proceed with the cause on the Law side of the Court, *and Freiburg & Workum by their counsel, without any objection to proceeding or Bill of Exception, voluntarily waived a trial by jury and "submitted the cause to the Court upon the issues of fact as well as of law,"* Tr. pp. 78, 79, and the Court decided the issue and held that "Ermann was the lawful pledgee of the 29 barrels "of whisky, and ordered it to be delivered to him, "and dissolved Freiburg & Workum's sequestration "with costs." Tr. p. 79.

Here, then, we have an issue between the same parties, of the same question, the validity *vel non* (as to form, surely) of the contract of a pledge between Meyer and Ermann, before a Court seized of jurisdiction of the subject matter and of the parties, and a voluntary

submission on the part of Freiburg & Workum of that issue to the Court, and a judgment rendered thereon.

And after this issue has been so submitted to, and tried by a competent Court, and decided by it, an appeal is taken in the Equity cause, and the same issue is here presented, as to the validity in form, of this contract of pledge.

It would seem that the simple statement of these facts and proceedings makes the strongest argument possible in support of the proposition.

The *second* proposition I submit to the Court is, that the appellants by submitting to and participating in the proceedings in their suit on the Law side of the Court, after the order therein of March 27th, 1884, and long after the decree in their Chancery suit, was an acquiescence in the decree in Equity, and no appeal should have been allowed them thereafter, and that they are not now entitled to any hearing before this Court.

What can be the interpretation or effect of their action in the matter be, if it does not lead to this result?

They brought their suit on the Law side of the Court, and sequestered 29 barrels of whisky. Ermann intervened and claimed it under his pledge, and bonded the property sequestered. They replied thereto, setting up substantially every fact contained in their Bill which they subsequently filed. Soon after the suit at law came up for hearing, and then the Court

ordered the "*case adjourned until the cause on the Equity side of this Court can be concluded.*"

Their Bill specifically declared that it was "ancillary and dependent and intended to aid your orators' suit at law." Tr. p. 3.

That they had sequestered their 29 barrels of whisky, under "the vendor's lien and privilege," and they specifically asked for an injunction, preventing Ermann and Meyer and Dreyfus "from disposing of or parting *with said whiskys* during the pendency of this suit," etc. Tr. pp. 1 and 3. The injunction was granted.

The suit in Equity was proceeded with, and on the 20th February, 1886, the decree in it was rendered, maintaining Ermann's pledge and dissolving the injunction.

In the meanwhile the suit at Law had remained in abeyance.

But on the 7th day of April, 1886, forty-six (46) days after the decree in Equity, the suit at Law was proceeded with, with this stipulation:

"The parties in this cause having filed a stipulation waiving the intervention of a jury, and submitted the cause to the Court upon the issues of fact as well as of law." The Court found the issues of fact raised by the pleadings in favor of Abraham Ermann,—recognized him as the lawful pledgee of the whisky, ordered it to be delivered to him, and dissolved Freiburg & Workum's writ of sequestration with costs. Tr. p. 78.

By the plaintiffs' voluntary act, they submitted the very suit at Law, which their Bill was declared to be in aid of, and ancillary to, and dependent upon, to the decision of the Court, and thereby having their writ dissolved and the bond which Ermann had given for the return of the whisky or its value *cancelled*, and he released from all responsibility.

Had Freiburg & Workum suggested to the Court that they intended to appeal from the decree in Equity, the order of March 27, 1884, would have been continued in force until their appeal could have been heard and determined. But they made no suggestion of the sort. There was no submission on their part to any order of the Court.

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It was of their own accord, by their own agreement, that the case on the Law side was taken up and tried without a jury.

Now, by what process of reasoning or what legal ingenuity, can the appellants escape from the conclusion, that this act, a free and voluntary one, was not an acquiescence in the judgment rendered on the Law side?

The *third* proposition, I submit, is, that in order that this Court should consider and pass upon the matters presented in this record, there should be some testimony tending to show that the appellants were at least creditors of Joseph Dreyfus, and as there is not a line of testimony in the record tending to show that

fact, this Court will not examine into the record, but merely affirm the judgment of the lower court.

I affirm without any fear of successful contradiction that no witness whatever was ever examined in reference to the matter in any way, and that no documentary proof was offered either in the Law suit or the Equity cause, touching the question.

It cannot be found in the Law petition, for while there is an averment of an indebtedness of $19,000, the prayer of that petition is for *no sum whatever* (Tr. p. 66); and besides, the affidavit is made by an agent, who simply swears "to the best of his knowledge and belief." Tr. pp. 66–67.

There does appear to have been a judgment rendered in the case on the 18th February, 1884 (Tr. p. 76), but that judgment was annulled and rescinded on March 17, 1884, on motion of Freiburg & Workum as "the result of an error," "and the defendant was not duly represented," "*and the cause left as it was before the same was rendered.*" (Italics ours). Tr. p. 78.

There is no further entry in the Law case until March 27, 1884, wherein "the case was adjourned," etc., and the only remaining one of April 7, 1886, wherein a judgment was rendered in favor of Abraham Ermann, intervenor, and no mention was made of Dreyfus at all. In truth, I do not see how there could be, when there was no prayer for a judgment against Dreyfus in their petition.

When we examine the Bill in Equity, we find the

first averment to be that "your orators have instituted " suit against Joseph Dreyfus for a just debt in the sum " of $19,000 with interest from judicial demand," and the Bill is sworn to. Tr. pp. 1 and 4.

An allegation is also made "that they had seques- " tered, as still belonging to defendant, 29 barrels of " whisky * * * under the vendor's lien and privi- " lege." Tr. p. 1. The sequestration is admitted, but the lien specifically denied under ~~set~~ in Meyer's answer (Tr. p. 19), and as there is no proof of any lien or privilege, the answer is evidence and prevails. Conley vs. Nailor, 118 U. S. p. 134.

Both Ermann and Meyer substantially deny that there was any debt. Tr. pp. 12 and 19. And from the filing of the Bill to the decree there is absolutely nothing to show any indebtedness on the part of Dreyfus to Freiburg & Workum. There was never any "*pro confesso*" against Dreyfus, nor any of those steps usually incident, subsequent to a "*pro confesso*," to establish its truth against the defaulting respondent.

When we come to the decree (Tr. p. 241) we find these words: "It is further ordered, adjudged and de- " creed that the complainants have judgment against " Joseph Dreyfus and Lehman Meyer, *in solido*, for " the sum of $18,901.40, with legal interest, *as set* " *forth in the judgment at law, with costs*," etc.

Now, no such judgment at law appears of record, on the Law side (that record is in evidence here, and part of this Transcript), or anywhere else.

There was no prayer for that sum or any other in the petition at law of Freiburg & Workum, and it is evident that no testimony whatever appears in this Transcript to sustain any such judgment or declaration.

It is true it stands there as a judgment, and it may also be said, unappealed from; and that Erman as an appellee cannot ask for its reversal; but this is the position we take, and that is, there is no evidence in the record, showing or tending to show, that Freiburg & Workum are the real, *bona fide* creditors of Joseph Dreyfus, and which would entitle or enable them to contest the rights of Abraham Ermann as a pledgee.

The law was explicitly stated by Mr. Justice Field, as the organ of the Court, in 17 Wallace, 521, that an undisputed debt must appear before a Court of Equity will interfere (Board of Public Works vs. Columbia College), and there is no case, which is contra, in the reports of this Court.

Ermann filed a demurrer to the plaintiffs' Bill, before answering, in which, among other things, he alleged as ground of demurrer, that "they do not "allege, nor does it appear, that they have obtained "any judgment, nor sued out any execution, * * * "and that until they had obtained judgment and "issued execution thereon, the goods whereof this "defendant is the lawful pledgee are not bound, nor "the plaintiffs entitled to any discovery or relief." Tr. pp. 9 and 10.

This Court said in Day vs. Washburn (24 How. 357), see also Claflin vs. McDermott, 12 Fed. Rep. 375: "The objection that the demands of the appel-
" lants had not been reduced to judgment and execu-
" tion before filing the Bill would have been fatal to
" the relief sought, if taken in time by the defendants.

"The defendants sought in every way to compel the
" plaintiffs to offer some evidence of their claim, but
" none was ever given.

The *fourth* proposition, I submit, is, that Ermann was an innocent pledgee for value, and therefore the decree of the Court *a qua* as to him should be affirmed.

He and Meyer, both, answered fully, explictly and responsive to every allegation in the plaintiff's Bill, as also the interrogatories propounded to each. There was no evasion, nor concealment on the part of either, and their answers were fully responsive to every allegation of the Bill. These answers were made under oath, and are evidence against the plaintiffs which they must overcome by the testimony of two witnesses, or one witness with corroborating circumstances. Conley vs. Nailor, 118 U. S. 134; Vigel vs. Happ, 104 U. S. 441; Voorhees vs. Bonested, 16 Wall. 16; Tobey vs. Leonard, 2 Wall. 423.

Is there any evidence in this record to overcome these answers, or show their untruthfulness?

While a number of witnesses were examined, none of them allude even remotely to the truth or falsity of the

answers of Ermann and Meyer, except one William Stern, and he was shown to be so untruthful, that even those who called him have not done him "so much reverence" as to mention him.

One very patent fact, in support of the good faith of Ermann, is, that when he learned by telegraph that the goods pledged to him had been seized, he hired a *locomotive* for which he payed $150, and came back to New Orleans as fast as steam could move him. A man would not ordinarily spend his money, or take such active measures, to protect a mere paper title.

The appellants assail Ermann's good faith by declaring that "the loan was concocted, while the law " officers were seizing the identical merchandise under " writs of Weiller, Dubois, Freiburg & Workum, " Osborne & Co. and Jacoby & Co., as creditors."

So far as the records are concerned, which are made part of this record, the appellants have fallen into an error which is little excusable. Jacoby & Co. vs. Dreyfus, filed their suit Oct. 31, Tr. p. 53; H. Weiller & Co., filed their suit Oct. 29, Tr. p. 119, and seized 10 barrels of the whisky pledged. At first an attachment was levied by garnishment process in Meyer Weill & Co's hands—and " soon after a sequestration " of the unsold goods of Weiller & Co." Labatt's testimony, p. 43.

Freiburg & Workum's seizure was not made until the 30th Oct., Tr. p. 69; and their petition was not filed until Oct. 31st. Tr. p. 65.

Neither the record of Osborne & Co., nor of Dubois, is a part of this transcript, and the appellants are quite wild for imaginary facts, when the statements on p. 20 of ~~this~~ brief are considered.

There was only one seizure of the goods on Monday which Ermann claimed, and that from Mr. Labatt's own *testimony* would not appear to have been made early Monday morning.

That Ermann parted with his money and has never recovered it can scarcely be doubted. If he was in bad faith, he has already paid very severely for it; even though the judgment of this Court be in his favor.

He had long known Dreyfus, and so far as Ermann knew, was in good credit when he made the loan to Meyer. He had often loaned Meyer money before, even without security. Meyer was in good credit, and he trusted him "as a friend," not as a borrower. Meyer presented to him securities (warehouse receipts), which bore the signature of a man whom Ermann knew was wealthy and "as good as gold." Ermann knew the signatures. Was there gross or culpable negligence here that any doctrine of constructive notice can be applied? On the contrary, was it not a mere want of caution as distinguished from gross and culpable negligence?

It is said in argument that Ermann could have stopped payment of his checks and the discount of his notes. There is not a word of testimony in this record tending to show when these checks and notes were

used. Both parties were examined by the appellants, and nothing was asked concerning these matters. And now, this Court is asked to presume that the checks were not used, nor the notes, prior to Ermann's learning that these pledged goods came from Dreyfus' store.

So far as the publication in any newspaper is concerned, there is no rule of law which makes a statement of fact in a newspaper either actual or constructive notice. It is not sufficient to show that a person was in the habit of reading the paper. It must be proved that he read it. Lincoln vs. Wright, 23 Penn. 76.

We do not think there is a reasonable ground for imputing to Erman under the circumstances gross and culpable negligence.

Before any suit was filed by complainants, either at law or in equity, the checks given by Ermann had been cashed and his note discounted.

When the seizures were made, they were only of a very small portion of the stock pledged to him. As soon as he could return to New Orleans, and make arrangements, he set up his claim to these articles so seized. It was not until then that the claim was made by the complainants, that these transactions were simulated, fraudulent and void. If simulations, then frauds. So that the real issue therein presented was *simulation vel non*. Ermann knew that there was no truth in this charge. He was advised by his counsel, that no other question was presented, or that

could be tried. It was while this issue was pending, and untried, and before any suit in Equity had been filed, that his last note fell due. Was the answer filed by the plaintiffs to Ermann's intervention, notice to him of any other fact than the one presented of fraudulent simulation? Judge Boarman, with all the facts before him, held that Ermann had not such notice as should have prevented him from paying the last note. We think this Court will agree with him.

We respectfully submit that the judgment of the Circuit Court should be affirmed.

R. H. BROWNE,
C. B. SINGLETON,
Solicitors for A. Ermann.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

No. 228.

FREIBERG & WORKUM, PLAINTIFFS AND APPELLANTS,

versus

A. ERMANN, DEFENDANT AND APPELLEE.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF LOUISIANA.

Order—Adjournment of Case, etc.

[Extract from the Minute Book, November Term, 1883.]

NEW ORLEANS, Thursday, March 27th, 1884.

Court met, pursuant to adjournment.

Present: Hon. Edward C. Billings, District Judge.

Freiberg & Workum
vs.
Joseph Dreyfus. } No. 10,378.

This cause came on to be heard on the intervention and 3d opposition of A. Ermann.

Singleton, Browne & Choate, for intervenor.

D. C. & L. L. Labatt, for plaintiffs.

And after hearing counsel; it was ordered that this case stand adjourned until the cause on the equity side of this Court can be concluded, provided the intervenor proceed speedily in the equity, and that there be substituted in said equity cause 5 days for 30—10 days for 60, as provided in the equity rules.

CLERKS OFFICE:

I certify the foregoing to be a true copy from the original record in this office:

Witness my hand and seal of said Court, at the City of New Orleans, this 19th day of February, 1890.

[SEAL] E. R. HUNT, *Clerk.*

To the Honorable the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana:

H. Weiller et als. vs. Joseph Dreyfus. No. 10,521.
S. Jacoby et al. vs. Joseph Dreyfus. No. 10,520.
H. Freibourg et al. vs. Joseph Dreyfus. No. 10,505.

By decretal orders entered in the above cases on 20th February, 1886, the undersigned, as Special Master, is directed to ascertain and report whether certain goods which on the 27th October, 1883, were invoiced at $19,893.67, and which, on the 29th of that month were pledged by Lehman Meyer to Abraham Ermann to secure a loan of $15,000 and interest, made by the said Ermann to the said Meyer, have been sold by the said Ermann, and if so, at what price—whether said goods were sold on the best terms and for the best prices practicable—whether the prices realized were reasonable, and whether a larger sum should have been obtained.

For the purpose of investigating the facts touching the sale of the said goods, the Master, on notice, assigned Saturday, the 27th February, ult., for the hearing. On that day D. C. & L. L. Labatt, solicitors for the complainants, and R. H. Browne, of counsel for A. Ermann, appeared before him; and thereupon complainants' solicitors filed the protest, which is herewith returned, and declined for reasons therein stated to produce or to participate in the examination of witnesses.

In a sworn statement before the Master, Mr. Ermann says: That he made the most diligent efforts to sell the goods in this city, but from fear of possible litigation, he was unable to obtain purchasers, and that consequently he was compelled to incur the expense of sending the goods to Texas and elsewhere for sale—that many of them, and especially the cigars, had become injured, and had deteriorated in value from long keeping—that the gross amount realized by him from the sales was $14,978.67
and that the costs amounted to 1,912.42

$13,066.25

In connection with this statement, the Master has examined the various bills of sale of the said goods, and the account current between L. Meyer and Ermann, all which have been filed by Ermann and are herewith returned. The account current shows balance due to Ermann, including interest, on the 15th January, 1886, of $2,533.75.

The Master reports: That the goods and merchandise

pledged by Lehman Meyer to Abraham Ermann were sold by the said Erman on the best practicable terms, and for the best prices, that, under the circumstances, could be obtained for them; that the gross amount of sales was $14,978.67
and the cost of selling was 1,912.42

leaving as net proceeds $13,066.25
and, in the opinion of the Master, a larger sum could not have been obtained.

The Master asks that he be allowed $50 for his services herein.

March 2, 1886. Respectfully submitted,
(Signed) J. W. GURLEY,
Special Master.

PROTEST OF D. C. LABATT FOR COMPLAINANT.

Weiller & Co. }
vs. } No. 10,521.
Dreyfus et al. }

Solicitors for complainant, upon notification by Special Master Gurley, protest that they have no interest in contesting the fact as alleged by Ehrman, that the goods taken in pledge by his claim, as recognized, and do not wish to be committed by any proof he may offer, as complainants have no interest to contest his mode of disposition of the same, and desire hereby to notify said Ehrman and his counsel that complainants do not intend that they shall be liable for costs not necessary to be incurred. That complainant, so far as they are concerned, waive any right accorded them to exact proof that the merchandise brought more than the amount which the decree recognizes to have been the sum pledged.

N. O., February 26, 1886.
(Signed) D. C. & L. L. LABATT,
Solicitors for Plaintiff, and for S. Jacoby & Co. and Freiburg & Workum.

Filed before me this 26th February, 1886.
(Signed) J. W. GURLEY, *Master, etc.*

Clerk's Office:
A true copy of the original filed March 2, 1886.
New Orleans, February 21st, 1890.
E. R. HUNT, *Clerk.*

[It is agreed between counsel, that the foregoing should have been incorporated in and made part of the original Record in this cause.]